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CONSTITUTIONAL CONVENTION COMMISSION

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ESTHER A. CASE

JOHN W. MITCHELL

HAL C. CROFT

E. PHILIP SAYRE

COMMISSION MEETING

Brown Estate

Port Deposit, Maryland

October 24, 1966

WILLIAM C. WALSH

JOHN C. BROOKS
Executive Director

KATHLEEN E. HUTTENLOCH
Director of the Executive Council

William Prescott Allen (Designated December 15, 1965)
Ernest H. Cory, Jr. (Designated May 12, 1966)
Walter M. Hall (Designated December 10, 1965)
William J. Hall (Designated September 14, 1965)
Ridgely P. Hall (Designated August 4, 1966)
George D. Russell, Jr. (Designated July 28, 1966)

VOLUME VIII

THE MICHIGAN TRUST COMPANY
Baltimore, Maryland 21201

Maryland

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1967

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Vol. 8

FOLIO

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JAMES O'C. GENTRY

MELVIN J. SYKES

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FURMAN L. TEMPLETON

WILLIAM C. WALSH

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Executive Director

KALMAN R. HETTLEMAN

Assistant to the Executive Director

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Walter R. Haile (*Resigned December 20, 1966*)

William J. McWilliams (*Resigned September 10, 1965*)

Ridgely P. Melvin, Jr. (*Resigned August 2, 1966*)

George L. Russell, Jr. (*Resigned July 12, 1966*)

* * * * *

700 Mercantile Trust Building
Baltimore, Maryland 21202

CONSTITUTIONAL CONVENTION COMMISSION

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AND DECLARATION OF RIGHTS

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Stanford Hoff
John W. Mitchell
(appointed on November 9, 1966)
Melvin J. Sykes
(appointed on July 12, 1966)
Lewis D. Asper, Reporter

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George L. Russell, Jr.
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Charles Mindel
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John H. Michener, Reporter
(appointed on September 12, 1966)

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William C. Walsh
(served until June 6, 1966)
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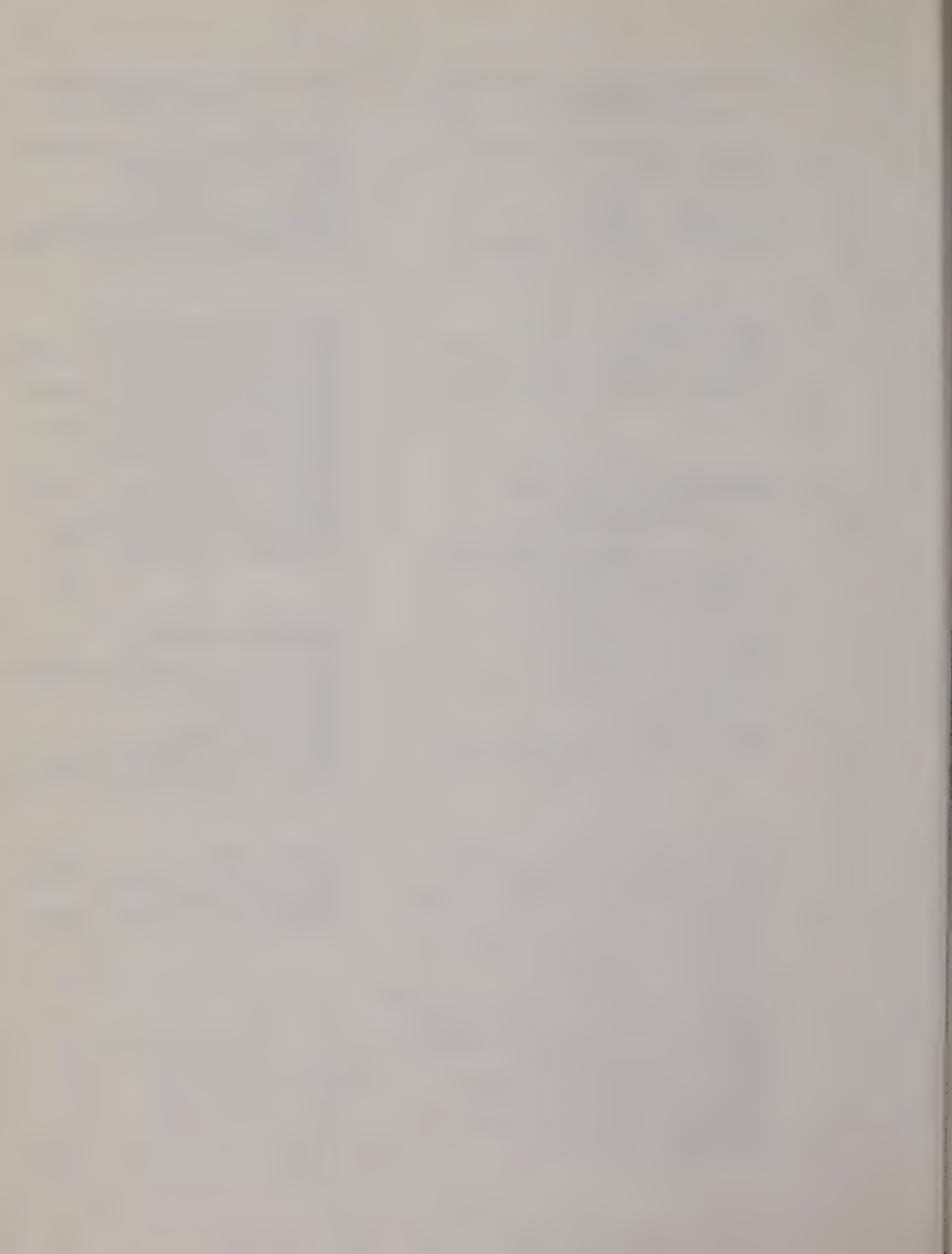
William Prescott Allen
(served until January 5, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
Walter R. Haile
(served from July 12, 1966
to December 20, 1966)
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Frank A. DeCosta, Jr.
(served as Reporter until
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Harry Bard
Richard W. Case
Martin D. Jenkins
Margaret Kostritsky, Reporter

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(served until June 6, 1966)
Hal C. B. Clagett
(served until June 6, 1966)

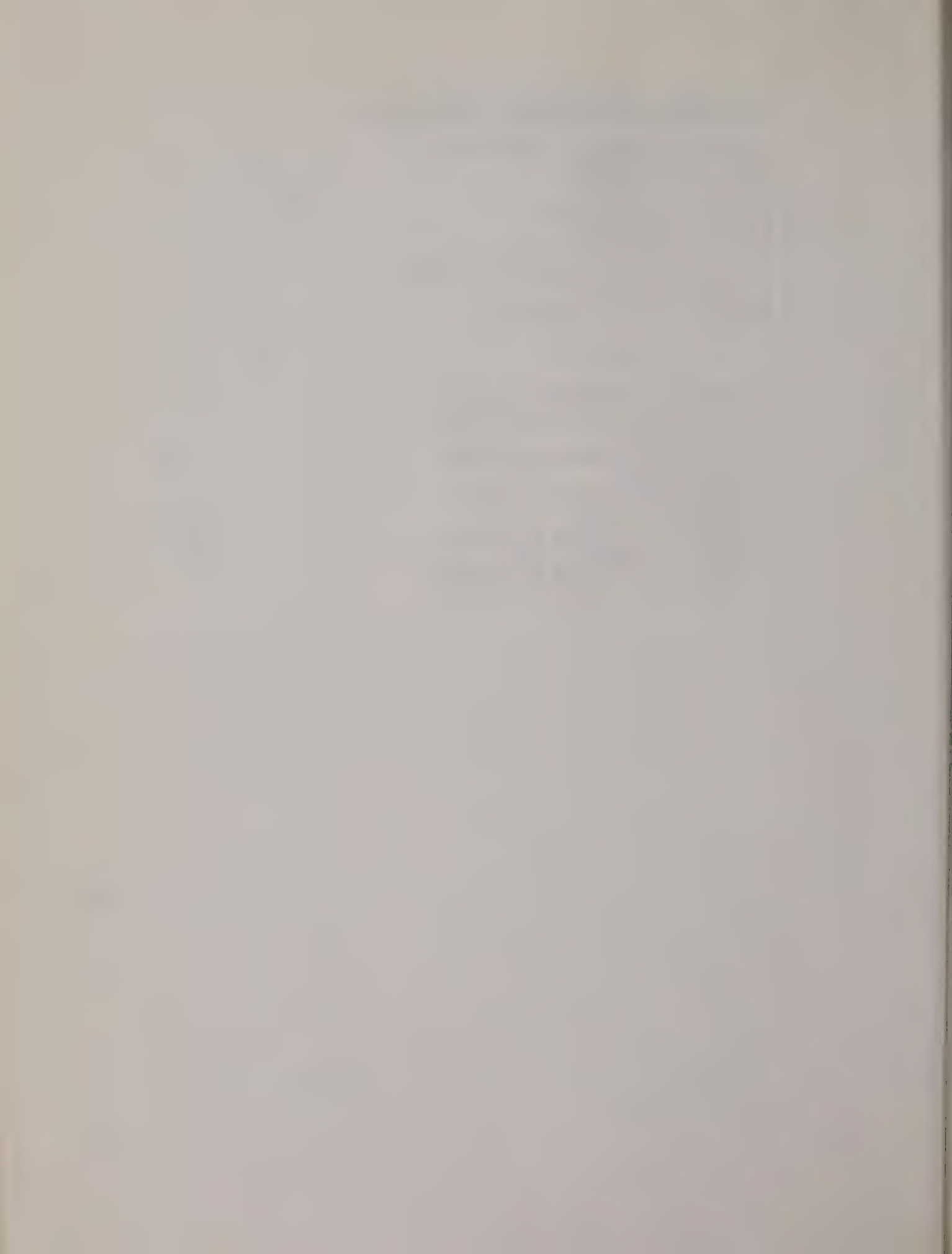


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Charles Della
(served until June 6, 1966)
Stanford Hoff
(served until June 6, 1966)
Clarence W. Miles
(served until June 6, 1966)
George L. Russell, Jr.
(served until June 6, 1966)



1 CONSTITUTIONAL CONVENTION COMMISSION

2

3 Meeting of the Constitutional Convention

4 Commission held on Monday, October 24, 1966, at

5 10:30 o'clock a.m., at the Brown Estate, Port Deposit,

6 Maryland.

7 PRESENT:

8 H. Vernon Eney, Esquire,
 Chairman of the Commission

9 Honorable E. Dale Adkins, Jr., Member

10 Dr. Harry Bard, Member

 Calhoun Bond, Esquire, Member

11 Mrs. Elsbeth Levy Bothe, Member

 Dr. Franklin L. Burdette, Member

12 Richard W. Case, Esquire, Member

 Hal C. B. Clagett, Esquire, Member

 Mr. Charles Della, Member

13 Mrs. Maurice P. (Leah S.) Freedlander, Member

 James O'Conor Gentry, Esquire, Member

14 Walter R. Haile, Esquire, Member

 John R. Hargrove, Esquire, Member

15 Stanford Hoff, Esquire, Member

 John B. Howard, Esquire, Member

16 Dr. Martin D. Jenkins, Member

 Honorable William Preston Lane, Jr., Member

17 Robert J. Martineau, Esquire, Member

 Edward T. Miller, Esquire, Member

18 Charles Mindel, Esquire, Member

 John W. Mitchell, Esquire, Member

19 Mr. E. Phillip Sayre, Member

 Alfred L. Scanlan, Esquire, Member

20 Mr. L. Mercer Smith, Member

 Melvin J. Sykes, Esquire, Member

21 Dr. Furman L. Templeton, Member

 Honorable William C. Walsh, Member

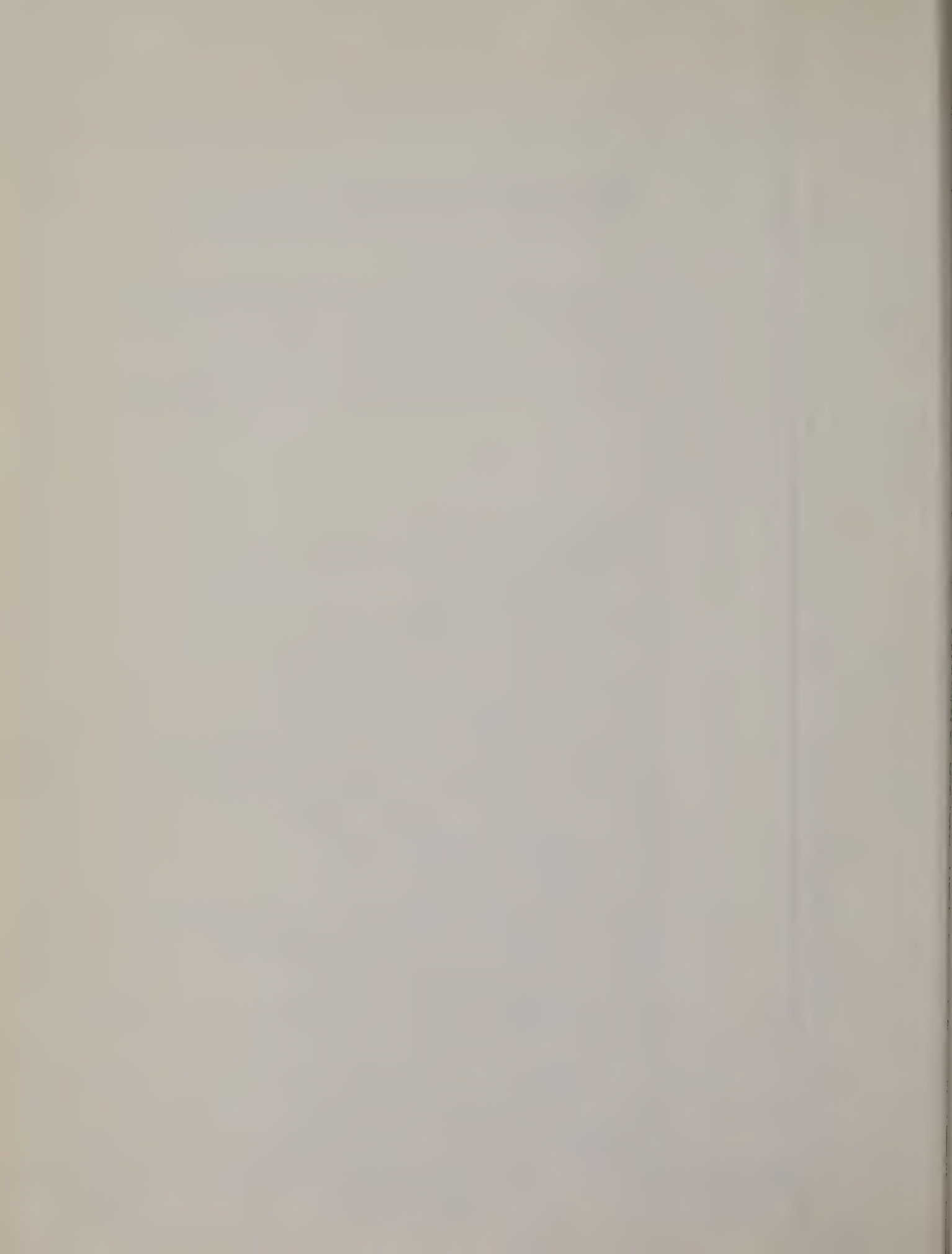
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1 ALSO PRESENT:

2 John C. Brooks, Esquire, Executive Director
3 Dr. John H. Michener, Research Assistant
4 Dr. Clinton Ivan Winslow, Consultant
5 Mrs. Margaret Kostritsky, Reporter
6 Stephen H. Sachs, Esquire, Reporter
7 William Noonberg, Esquire, Reporter

8 -----

9 THE CHAIRMAN: Can we get started, please?

10 The first matter on the agenda will be the approval of
11 the minutes of the August meeting. They were circulated
12 just the day prior to the meeting a week ago. Are there
13 any corrections or additions? If not, the minutes will
14 be approved as circulated.

15 MR. MARTINEAU: Is Judge Adkins here?

16 THE CHAIRMAN: Not yet.

17 MR. MARTINEAU: He had a question he mentioned
18 last time as to whether he was the one who made the
19 motion, and frankly, I thought he was going to bring it
20 up.

21 THE CHAIRMAN: We will hold it off until he
comes. Next item is the report of the Secretary.

MR. MARTINEAU: Nothing to report.



1 THE CHAIRMAN: Next is the report of the
2 Executive Director.

3 MR. BROOKS: No report.

4 THE CHAIRMAN: I have just a very few things
5 to mention. First, I want to let all of you know that
6 Clarence Miles continues to improve. Mrs. Miles said
7 that if he continues at this rate, he will go home some-
8 time this coming week, the latter part of the week. He
9 will probably be home for several weeks. He was quite
10 seriously ill for a time. He had an emergency operation
11 for gall bladder which they found had become dangerous
12 and had a touch of pneumonia after that, but is recover-
13 ing nicely. He is at Johns Hopkins. The Commission's
14 work is, as all of you, I am sure, realize, quite far
15 behind our schedule, and I am hoping that the bits and
16 pieces that we now have will fall into place so that we
17 can begin serious work on our Report very promptly.
18 Our next regularly scheduled meeting is November 21. I
19 would like each of you to keep that date marked on your
20 calendar, but I am sure that we will have to arrange
21 another meeting of the Commission before that time,

1 because there are a number of matters that are still
2 open which need solution by the Commission, and we can-
3 not wait until November 21 to have an answer on them.

4 I cannot even suggest when the next Committee
5 work will be completed to the point that these remain-
6 ing questions can be submitted to it, and therefore,
7 rather than try to arrange now for another meeting and
8 agree on when it shall be, we will try to get in touch
9 with each Member of the Commission before the end of
10 this week when hopefully we will have a better idea as
11 to what the status of the Committee work will be. I
12 would ask each Committee Chairman and Reporter as soon
13 as this meeting is over or if you have any breaks in
14 between, to check over your own work and let Mr. Brooks
15 or me know just as quickly as you can what additional
16 matters have yet to be reported by your Committee and
17 give us some idea of what your present plans are for
18 Committee meetings.

19 Here let me emphasize that, much as I regret
20 to suggest to any of you that you have additional meet-
21 ings this week after this two-day meeting, I am afraid



1 it is going to be absolutely imperative that we get
2 the Committee loose ends tied up within the next week or
3 ten days. It seems to me that probably it will be
4 desirable in order to save time that we circulate revised
5 drafts of the text by mail as quickly as they can be
6 assembled and sent out to you.

7 For this reason, we would like the Committee
8 Chairmen and Reporters to double check the Staff and
9 give us a marked up copy of the draft of their particular
10 part of the Constitution as their notes indicate it is.
11 I say this because we are two months behind on the index-
12 ing of the transcript and the preparation of the minutes.
13 This is a huge job. We simply don't have the manpower
14 to do it, and this means that we cannot rely on the
15 analysis of the transcript to pick up everything. We
16 will have to rely on our notes and use the transcript
17 as a check where notes are in conflict. May I ask that
18 as each of you receive reports by mail that you do not
19 lay them aside. We have found that in an effort to save
20 postage and the clerical job of mailing that we sometimes
21 put urgent letters together with rather bulky reports



1 in the same envelope, and some of you will assume it is
2 all report and will lay it aside until you have a chance
3 to look at it. For that reason, a number of people
4 did not get the notice of this meeting or got it but did
5 not receive the notice right away.

6 Open your package, even though it is bulky,
7 to see if it is an urgent communication. We will endeavor
8 to flag in some way for you the enclosures that are
9 sent to you which require immediate review, so that at
10 least you can give priority to those particular matters.

11 As all of you know, there are three matters
12 which are of special order of business for this afternoon.
13 I purposely made the matters a special order of business
14 for this afternoon immediately after lunch so as to
15 insure to the extent we can get the maximum possible
16 attendance in case you are delayed in arriving but also
17 to enable the Commission Members to discuss among them-
18 selves at lunchtime the Reports that will be acted on as
19 special order of business. They will be taken up in the
20 order in which they were made special orders of business.
21 That means that the special Report, not a numbered report,

1 but the special Report of the Committee on Miscellaneous
2 Provisions submitting a redraft of Section 3, I think it
3 was, as requested by the Commission.

4 At the last meeting will be the first matters.
5 You will have that redraft, I think, before lunchtime,
6 and you can be looking it over and any other suggestions
7 which Members have in connection with that and can be
8 discussing it at lunchtime.

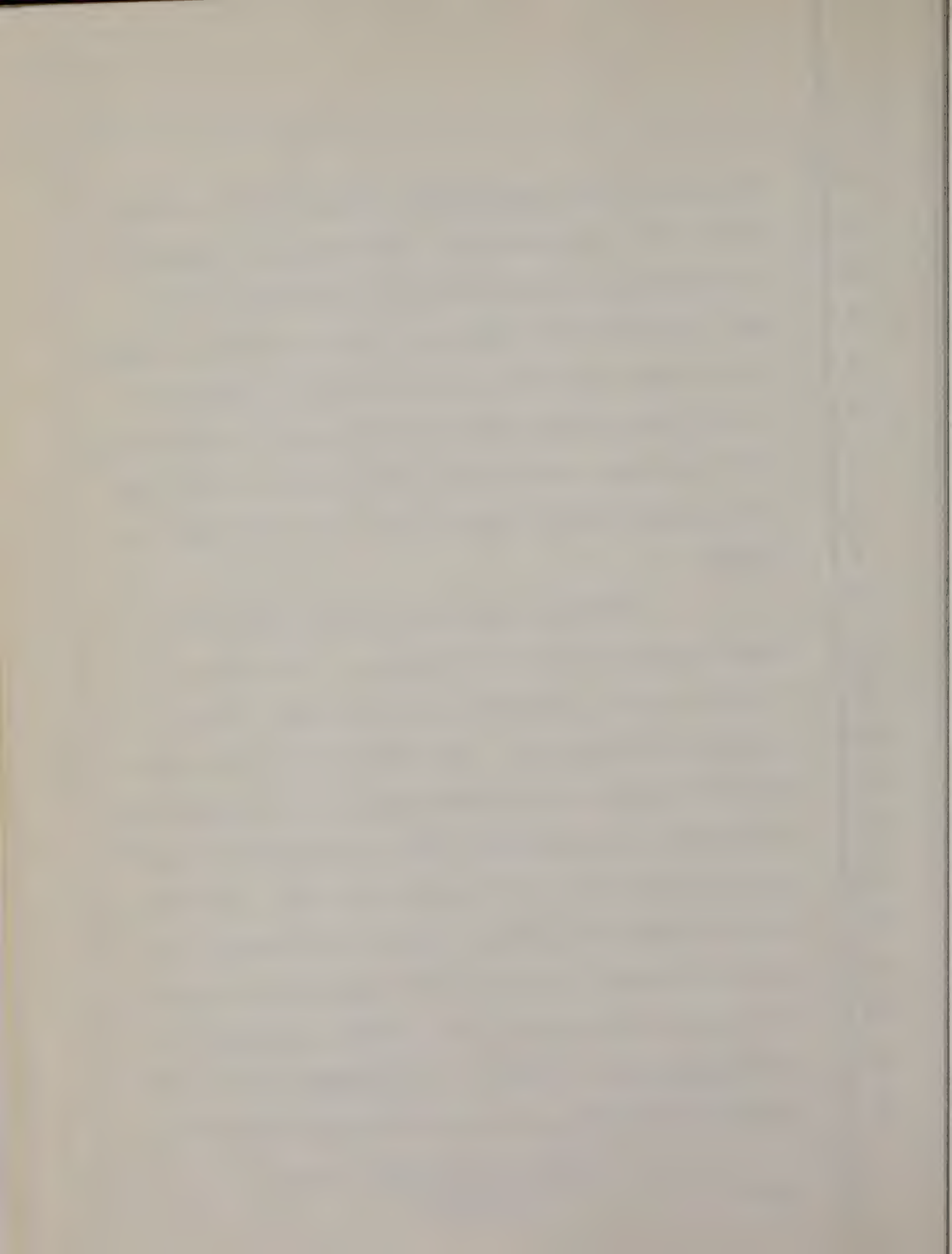
9 Secondly, the special order of business to
10 come up will be the discussion on the question of uni-
11 cameral or bicameral legislature. You have, or should
12 have, with you the complete draft of the Legislative
13 Article providing for unicameral legislature submitted
14 to you at the last meeting. You will recall that the
15 Commission's decision on that was to recommend alternates,
16 bicameral and unicameral, but to recommend one or the
17 other.

18 So the question to be discussed this afternoon
19 is which to recommend. As I think all of you know,
20 the divisions of the various groups which have discussed
21 this matter with the Legislative Committee and the



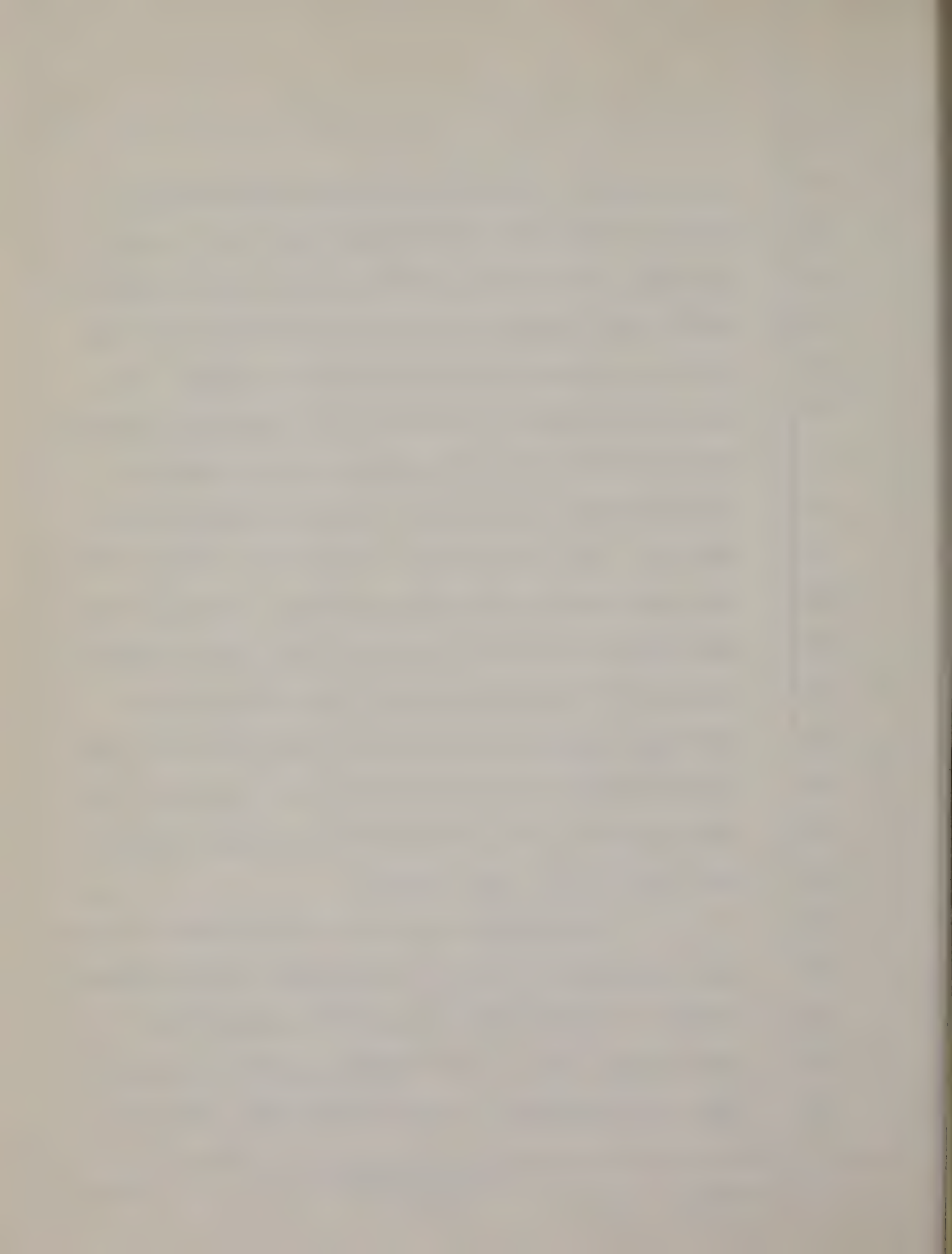
1 division of that Committee have always been very close,
2 almost in an even division. Presumably the Commission
3 would divide in somewhat the same way, and I ask this,
4 that you discuss and give some thought to that at lunch-
5 time so that the debate which will make up the record
6 on this issue to go to the Convention will be meaningful,
7 and if you give some thought ahead of time to just what
8 you are going to say and make your point concisely and
9 briefly.

10 The third matter will be the Report of the
11 Committee on Political Subdivisions. This will be a
12 lengthy report. It involves not one, but a number of
13 very important policies. This Report deals with one of
14 the most difficult and troublesome areas of Constitution-
15 making which the Commission faces, and I want to remind
16 you now just of a few of the decisions that the Commis-
17 sion has heretofore made and some of the problems that
18 will be presented to you in connection with that Report
19 so that you can be giving some thought about those, too.
20 At the meeting two sessions ago, the Commission decided
21 in favor of the approach which would give the counties



1 and the phrase used by the Committee residual power.
2 In other words, that the counties will have, broadly
3 speaking, all executive and legislative but not judicial
4 power, except to the extent that it is taken away from
5 them by expressed law of the General Assembly. The
6 same meeting decided tentatively on authorizing what we
7 call, for lack of a better term, regional government,
8 some government larger than a county and smaller than
9 the State. But that was not discussed very fully, and
10 the exact extent to which the Committee and the Commis-
11 sion want to go on that is a matter yet to be determined.
12 It cannot be further deferred. The Committee has a
13 draft and several alternate drafts, as a matter of fact,
14 but the decision of this question must be made at this
15 meeting because if it is deferred any longer, the neces-
16 sary drafting just can't be done.

17 I anticipate that those special orders of busi-
18 ness will take the rest of the afternoon and the evening
19 session. I would hope that we would conclude those by
20 the evening session. This leaves us still for considera-
21 tion a very substantial amount of material. There is



1 another Report of the Committee on the Judiciary Depart-
2 ment. For the most part this is merely corrections,
3 but there are one or two very substantial policy matters
4 that need not take long, but must be discussed and de-
5 cided. The Sixth Report of the Committee on Miscellaneous
6 Provisions, this is not the one dealing with the educa-
7 tional provisions but other provisions, and then the
8 further Report of the Committee on Legislative Department
9 with respect to impeachment. Each of you should have
10 this morning two memoranda, research memo by W. E. Sim-
11 mons, and a separate memo, research memo by Mrs. Freed-
12 lander dealing with the question of impeachment. If you
13 will look at those, I think you will conclude that there
14 is no inherent power of impeachment in the Legislature
15 or at least it is very dangerous to assume there is,
16 and this means we will have to make a decision as to who
17 shall have the power of impeachment and to what officers
18 it shall extend. We then have a Ninth Report of the
19 Committee on Declaration of Rights and Elective Franchise
20 dealing with a Preamble and a redraft, revised draft of
21 the bill proposed for the 1967 session of the Legislature,

1 providing the machinery for the Convention.

2 As you can see, this is a very heavy agenda,
3 but I think if we move briskly as we did at the last
4 session, we can complete it.

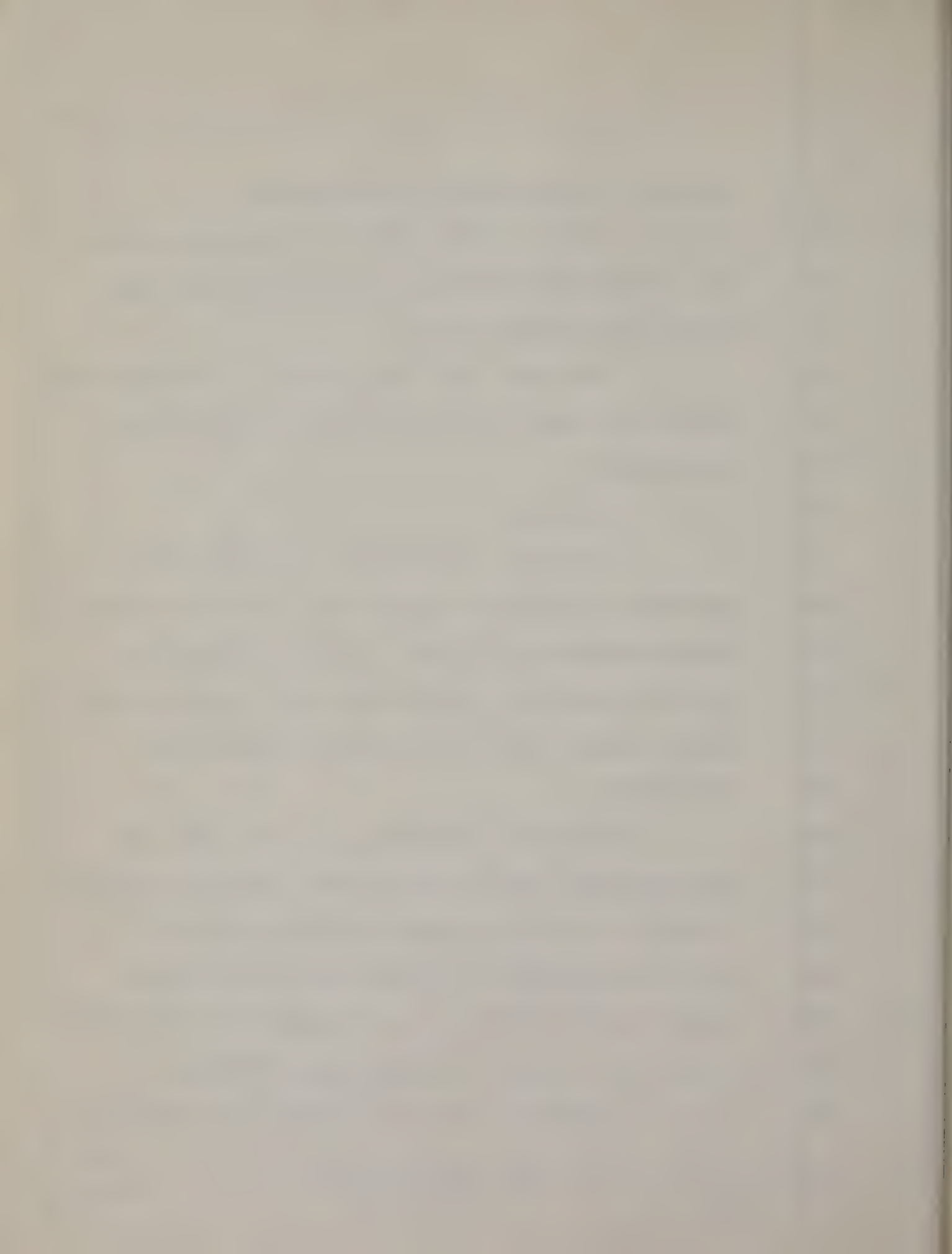
5 All right, let's now proceed to a consideration
6 of the Third Report of the Committee on State Finance
7 and Taxation.

8 Mr. Case?

9 MR. CASE: Mr. Chairman and Members of the
10 Commission, this Report involves two sections or Articles
11 of the Declaration of Rights, so far as affirmative
12 action is concerned, and there are other negatives which
13 I shall discuss subsequent to consideration of the
14 affirmatives.

15 The first affirmative is, and I might say
16 parenthetically that the affirmatives have taken the form
17 of complete recasting of Articles 14 and 15 of the
18 Declaration of Rights in the present instance and for
19 reasons I will indicate as we go through this. Fourteen
20 is relatively simple and embraces one principle.

21 Fifteen is much more complex, and I am sure,



1 requires a rather extended discussion of what is being
2 left out and what is being substituted, because there
3 are some very definite substantive substitutions that
4 are being recommended by the Committee to which your
5 attention will be invited at a later time. These are
6 the two tax Articles in the Declaration of Rights,
7 Articles 14 and 15, and to start with, Article 14, as
8 you will see on the first page of the Report, it now
9 says that, No aid, charge, tax, burthen or fees ought
10 to be rated or levied, under any pretense, without the
11 consent of the Legislature.

12 This is, of course, the 1776 version of the
13 cry, No taxation without representation, and it was
14 taken by and large from the Article 3, from the Stamp Act
15 Congress resolutions of 1765, which read that it is
16 inseparably essential to the freedom of the people and
17 the undoubted right of Englishmen that no tax be imposed
18 on them but with their own consent given personally or
19 by their representatives.

20 In some States, in modern practice, it has
21 become possible to delegate taxing powers to nonelected

1 boards and agencies, but our Committee feels that this
2 would be very incorrect procedure and bad as a matter
3 of substance, and we feel that the Constitution ought to
4 make it perfectly clear that only the elected represen-
5 tatives of the people carry the right to impose tax.
6 Therefore, the new Article 14 will be found on Page 2 as
7 recommended by the Committee, at least which says in a
8 little more modern language that, No tax shall be imposed
9 except for a public purpose and except by the elected
10 representatives of the people.

11 The, public purpose, wording apparently is
12 implied in the Court decisions which have construed
13 present Article 14, but we felt that this ties in nicely
14 with the use of that phrase, so far as the borrowing
15 capacity is concerned in Section 34 of Article 3 which
16 the Commission has already considered.

17 So that, Mr. Chairman, is -- I don't know
18 whether you want to take action on these as we go along.

19 THE CHAIRMAN: Dr. Burdette?

20 DR. BURDETTE: A question, Mr. Chairman,
21 about the elected representatives of the people. That

1 would strike me as being subject to the interpretation
2 under our new Constitution that the Governor and Lieu-
3 tenant Governor, elected representatives of the people, could
4 exercise the taxing power under doctrines that have
5 developed in the Federal Government that the President of
6 the United States is the most representative of all the
7 elected officers. I am not sure, that is the first part
8 of the question -- the second part is whether or not
9 this is intended to mean below the State level and at
10 the local level so that boards, well, even at the State,
11 even the State or local level, that boards elected by
12 the General Assembly, if there are such later created
13 could be given the taxing power and if local boards be-
14 ing elected by representative bodies could receive the
15 taxing power.

16 MR. CASE: The answer to your questions in the
17 inverse order the way you presented them are that first,
18 boards which are appointed by the Legislature are not
19 elected representatives of the people and would not have
20 the taxing power and this provision, as I tried to ex-
21 plain a few minutes ago, is directed expressly at this

very thing, that only the elected representatives of the

1 people can have the power to exact a tax from them.
2 Agencies that are not elected by the people, a very good
3 example of it would be the Washington Suburban Sanitary
4 Commission, for example, would not be able to impose a
5 tax, that the ultimate power of imposing the tax rests
6 in either the County Commissioners or County Council, if
7 you are going into some form of government other than the
8 County Commissioner form.

9 Now, as to whether or not the Governor is an
10 elective representative of the people, I must confess
11 I have never heard that context advanced, although from
12 the standpoint of the mere use of the English language,
13 I suppose it could be said that the Executive is, but
14 elected representatives of the people are words of
15 art, really, it seems to me, and they come down to almost
16 from Magna Charta to the present time to mean the Legis-
17 lative Branch as distinguished from the Executive Branch.

18 THE CHAIRMAN: Mr. Gentry?

19 MR. GENTRY: My question is whether we really
20 need such provision as this at all for the reason we
21 would have, I assume we will have in Finance or Legislative

1 Articles the grant of the taxing power and in the absence
2 of any such grant elsewhere, there would be no other
3 taxing power, so it may not be -- why I have no objection
4 to this language as such, it may not be necessary to
5 state it twice. In other words, to say well, this body
6 does have the taxing power and in another Section say,
7 but nobody else has any taxing power.

8 THE CHAIRMAN: There is no expressed grant of
9 taxing power in the Legislative Article.

10 MR. GENTRY: And there would be no expressed
11 grant of taxing power in anybody other than the Legis-
12 lature, so it would fall to the Legislature to impose
13 any taxes in the absence of the grant of such taxing
14 power to some other unit of government.

15 MR. CASE: Let me answer that. I think this
16 goes to the fundamental concept which must be kept in
17 mind continually through this whole discussion, and a con-
18 cept, I might add, in which the Court of Appeals in
19 deciding a number of cases even in modern times has not
20 kept in mind, and it is, of course, that the Legislative,
21 the Legislature being the holder of the sovereignty of

1 the people has plenary power to impose taxes and there-
2 fore, it is not necessary to make a specific grant of
3 the taxing power as it is in the Federal Constitution,
4 for example, to the Legislature because it there rests,
5 and this is clear.

6 Now, what this Section should do is to make
7 it perfectly clear that the Legislature cannot delegate
8 that very important power to some board or agency or
9 anybody other than the elected representatives of the
10 people.

11 THE CHAIRMAN: Mr. Sykes?

12 MR. SYKES: My question is, does the language
13 do that? It permits a tax to be imposed by the elected
14 representatives of the people which you say means the
15 elected legislative representatives, although I think
16 maybe the word, Legislature, would clarify it, but if
17 the Legislature passes a law which says that a tax may be
18 imposed by a Board of County Commissioners or by some
19 administrative board which may not be directly elected
20 by the people, the argument could be made from this
21 language that the legislative representatives of the

1 people have acted and in a sense immediately although not
2 directly they have imposed the specific tax in question
3 by permitting it to be imposed by their delegate to the
4 Legislature.

5 MR. CASE: That is the same point Franklin
6 Burdette was making. I think it has no validity, that the
7 tax has to be imposed by the elected representatives of
8 the people, not by some department or agency selected
9 by the representatives of the people.

10 MR. SYKES: Wouldn't it be clear if the word,
11 directly, or some such thing that would negate delega-
12 tion, were written into the Article?

13 MR. CASE: If you can think of a word that
14 is perfectly acceptable to me because this is the whole
15 idea to negate delegation to anyone other than an
16 elected representative of the group.

17 MR. SYKES: I would suggest the word, except
18 directly by the elected representatives of the people --

19 THE CHAIRMAN: May I raise a question with
20 you on that? The County Commissioners are going to have
21 the power to impose taxes and while they are Legislative,

1 they are also Executive.

2 MR. SYKES: But while they are Executive,
3 they are also Legislative.

4 THE CHAIRMAN: Mr. Case, did you want to
5 comment on the suggested language?

6 MR. CASE: I don't think that the word, Legis-
7 lative, ought to go in for the reasons that have been
8 suggested perhaps by the Chairman and primarily because
9 as I understand the words that are used in constitutional
10 context, it is not necessary. The elected representatives
11 of the people means the legislative body. That is what
12 it does mean, but as far as directly by, those are your
13 real suggestion, isn't it, Mel?

14 MR. SYKES: Yes.

15 MR. CASE: Directed by. I would like to think
16 about it a little, but right off the bat, it doesn't
17 strike me as being --

18 THE CHAIRMAN: Let me make a further obser-
19 vation in connection with this same language. It may have
20 some bearing upon it if I do. Is it the intention of
21 the Committee in recommending this language that an elected

1 school board which is certainly not a legislative body
2 would have the power if granted the power by the Legisla-
3 ture?

4 MR. CASE: They are not representatives of
5 the people.

6 THE CHAIRMAN: There are some that are elected.

7 MR. CASE: They are elected, yes, but they are not
8 representatives of the people. They are elected to do
9 a specific job on the school board.

10 DR. BARD: Some States they are. They actually
11 set the school tax.

12 MR. SCANLAN: That still doesn't make even
13 them the representatives of the people.

14 THE CHAIRMAN: That is the point I want to have
15 brought out, that the Committee's recommendations mean
16 only elected representatives of the people in the technical
17 sense, meaning representative for all purposes so that
18 you do more nearly mean legislative than anything else.

19 MR. CASE: Right.

20 THE CHAIRMAN: Mr. Mindel?

21 MR. MINDEL: Dick, I heard you say something

1 about a tax set by County Commissioners. Would this
2 mean a metropolitan commission that could not set a sewer
3 tax?

4 MR. CASE: What do you mean, a sewer tax?

5 MR. MINDEL: They have a sewer --

6 MR. CASE: You said two different things,
7 Charlie. When you are talking about the sewage charge,
8 you are talking about a use charge, benefit charge or
9 tax.

10 MR. MINDEL: I ask the question, that does not
11 necessarily fall within a tax, does it?

12 MR. CASE: Benefit assessment or service
13 charge, of course not.

14 MR. MINDEL: It would be outside of this area.

15 MR. CASE: That is not a tax. It has been
16 so ruled, and I could give you pages of ruling on that
17 point.

18 MR. CLAGETT: I want to be clear and ask the
19 question that elected representatives would include
20 County Commissioners or County Councils of local sub-
21 divisions.

1 MR. CASE: Yes, sir.

2 THE CHAIRMAN: Mr. Miller?

3 MR. MILLER: I would like to ask the Chairman
4 about the word, taxes. You changed some of the wording.
5 Would licenses be a tax?

6 MR. CASE: A license?

7 MR. MILLER: For instance, an auto license.

8 MR. CASE: That is a tax.

9 MR. MILLER: Your belief is that the State
10 under this couldn't delegate the authority to the Com-
11 missioner of Motor Vehicles or somebody to decide what
12 the license should be on an automobile?

13 MR. CASE: Absolutely. That is what we want
14 to get at.

15 MRS. FREEDLANDER: I have some reservations in
16 including the word, directly, in light of the Political
17 Subdivisions Report we will get later. It directly might
18 affect our political subdivisions.

19 THE CHAIRMAN: Mrs. Freedlander, I don't think
20 if I understood the Committee's recommendation, that the
21 elimination or failure to add, directly, would really

1 permit a delegation. In other words, if I understand the
2 recommendation of the Committee, it is that the Legis-
3 lature or the County Councils or a Commission of County
4 Councils could not delegate a taxing power to a non-
5 elected regional government. Isn't that your position?

6 MR. CASE: That is exactly it.

7 THE CHAIRMAN: So this would mean that if you
8 created a regional government headed by a board which
9 was not, and did not, include a representative form of
10 government with elected representatives, the effect or
11 intended effect of this provision is to prevent the Legis-
12 lature from delegating the taxing power of that board.
13 But if they are elected, popularly elected, then the
14 power could be delegated.

15 Mr. Clagett?

16 MR. CLAGETT: We draw the fine line of dis-
17 tinction that Mr. Case has already defined in answer
18 to Mr. Mindel's question between tax and revenues.

19 THE CHAIRMAN: Yes, I think this should be
20 made clear that the tax as used in its technical sense
21 and does not mean a service charge or a fee or a particular

1 privilege or service or anything of that sort.

2 Mr. Gentry?

3 MR. GENTRY: I recognize your substitution of
4 an existing Article in the Declaration, but does the
5 Committee feel strongly that it should go in with the
6 Declaration which heretofore or up to this point has been
7 a reservation of private rights whereas this is, I would
8 look at this as more of a restriction on the plenary
9 taxing powers of the State.

10 MR. CASE: The answer to that is that our
11 Committee has no desire to encroach upon the territory
12 so well developed by your Committee, and we will be
13 very happy to construct our own little Article which we
14 will call Revenue and Finances, and put this in that.

15 MR. GENTRY: Very good.

16 MRS. BOTHE: There will be one anyway, won't
17 there?

18 MR. CASE: I think so.

19 MR. GENTRY: I think that is where it belongs
20 and not a Declaration.

21 THE CHAIRMAN: Mr. Sykes, can we come back to

1 your suggestion as to language? Do you want to make a
2 motion?

3 MR. SYKES: I had one further comment. As I
4 gather from the discussion, what is really meant by the
5 elected representatives of the people, is the Legislature
6 on the State level or legislative bodies or bodies hav-
7 ing the local legislative power, elected by the people.

8 MR. CASE: That is correct.

9 MR. SYKES: And I would think that some such
10 succinct formulation would be possible which would clarify
11 these questions. I do think that the word, directly,
12 is necessary in order to avoid any doubt about what the
13 Commission says it is doing. I am not wedded to the
14 language, but I would make a motion that would be that
15 the Article be redrafted in substance to read, No tax
16 shall be imposed except for public purpose and except
17 directly by the Legislature or local boards exercising the
18 local legislative powers elected by the people.

19 THE CHAIRMAN: Well, could you shorten that
20 by saying, Except the elected representatives of the
21 people exercising legislative power so you don't have to

1 differentiate between the State level and local level.

2 MR. SYKES: The only thing that gives me some
3 concern is your example or somebody's example of school
4 boards who have a certain amount, may have a certain
5 amount of legislative power. But I would be perfectly
6 happy with your formulation of it if that problem doesn't
7 give you any trouble.

8 THE CHAIRMAN: Well, this is normally the kind
9 of thing I would like to refer back to the Committee, but
10 time is such I don't know whether it is feasible. Can
11 we ask the Committee and its Chairman to think about this
12 and maybe come back to it before this meeting is over
13 rather than adopt the language right here.

14 MR. CASE: I will think about it.

15 THE CHAIRMAN: Is that satisfactory?

16 MR. SYKES: Yes, sir.

17 MR. CASE: I think it is allright the way it
18 is. You clutter it up with a lot of words, and you just
19 get nowhere.

20 THE CHAIRMAN: The next recommendation.

21 MR. CASE: Now, we move on to Article 15 and

1 Article 43 which have to be considered together and the
2 Report, I know probably a lot of you have not had a chance
3 to read the background of 15, which is a very interesting
4 background to those of us who enjoy thinking about fis-
5 cal matters. It goes back all the way as far as our
6 Constitution is concerned, although it has been amended
7 primarily, well, in a major instance in 1915 an amendment
8 was made to validate a city tax on securities that had
9 been invalidly collected for about twenty years prior to
10 that and also an amendment which was embraced with great
11 fervor by the single tax movement indicating how a move-
12 ment such as this can come under the tent of people who
13 have good intentions and still something in a basic
14 document such as a Constitution which lasts for many
15 years and people forget what is behind it, and then they
16 don't really know what it means in the first place. So,
17 there is an interesting historical background, and I
18 would invite the Commission to look at the Report, because
19 I think it gives a fairly good synopsis, thanks to Mr.
20 Sachs, of this background. Now, I am not going to go into
21 it all except as it applies to the specific points that

1 will be made. The amendment, as it now reads, starts
2 out that the levying of taxes by the poll is grievous
3 and oppressive and ought to be prohibited, that
4 paupers ought not to be assessed for the support of the
5 Government -- we are recommending this be eliminated
6 from the Constitution. The thrust of our recommendation
7 is that the Constitution's limitation on the taxing power
8 should be that of equality as far as possible and unifor-
9 mity as far as possible. The poll tax is not a tax which
10 has been used in recent years for the purpose of raising
11 revenue, although it once was.

12 Very few States have the prohibition against
13 the poll tax as such. Maryland did, for historical
14 reasons unrelated to voting, I might say. Of course,
15 the Supreme Court's recent decision permits the imposition
16 of a poll tax if it is not a prerequisite to voting and our
17 Committee felt that this particular matter should be left
18 to the Legislature within the guidelines of proper clas-
19 sification, uniformity and as will be suggested later.
20 Now, the amendment, Article 15 also says that, that the
21 General Assembly shall -- and I have always wondered whether

1 there would be any profit at all in taxing paupers, but
2 it has occurred to me that there would be, and the Com-
3 mittee seemingly thought that this was a pretty archaic
4 provision and recommended its elimination. I might say
5 that at an earlier time, I think it was when Mrs. Bothe's
6 Committee was dealing with the exemption law, I did
7 raise the point at that time as to whether or not this
8 particular provision had any constitutional meaning as a
9 basis for the exemption laws, and I think it was your
10 view, Mrs. Bothe, that it did not, and not having any
11 utility in that area, I think it is archaic and should go.
12 Now, the next Section really is the heart of the problem
13 because now what we are dealing with here is the question
14 of classification and uniformity. It has been my exper-
15 ience in dealing with tax matters for the State and
16 such opportunities as I have had that I can recall this
17 was particularly true when we were writing the sales
18 tax and the rules and regulations that construe it
19 and participating in the hearings, that generally speak-
20 ing, while nobody likes to pay taxes, the intelligent and
21 informed person will recognize the fact that the govern-

1 mental bill has to be paid. What he wants to make sure
2 of that at least he is treated like his neighbor if his
3 neighbor is similarly situated. In other words, the
4 criteria of a fair tax program necessarily depends on
5 like treatment for like instances, and we in the tax
6 field call this uniformity, which stems from proper
7 classification.

8 Article 15 of the Declaration of Rights for
9 many years contained a provision which sought to reach
10 uniformity. In the first instance, the thrust of this
11 particular Section was really on the ability of the tax-
12 payer to pay because as early as 1776, the Constitution,
13 Article said, and I am quoting, But every person in the
14 State ought to contribute his proportion of public taxes
15 for the support of the Government according to his actual
16 worth in real or personal property within the State.
17 So, the yardstick was the actual worth of the person.
18 He ought to pay, and the Constitution mandate was that
19 he should pay or contribute his proportion in accordance
20 with that. Now, in 1915, the Article 15 was amended and
21 brought into play for the first time the question of

1 classification, and as I said earlier, it was done be-
2 cause Baltimore City had imposed a tax on securities
3 and most every lawyer in the State apparently knew that
4 the tax was unconstitutional because there was no power
5 in the General Assembly to, they thought there was no
6 power, I will put it that way, I am not saying there
7 was or wasn't, but it was widely thought there was no
8 power to classify. So in 1915 as a result of a number
9 of studies that were made by the Citizens Tax Committee
10 and so on, or a principal study, the Article was amended
11 to provide that the General Assembly could by uniform
12 rules provide for the separate assessment of land and the
13 classification and subclassification of improvements on
14 land and personal property as it may deem proper.

15 It further said, and all taxes thereafter
16 provided to be levied by the State for the support of the
17 general State Government and by the Counties and by the
18 City of Baltimore for their respective purposes shall be
19 uniform as to land within the taxing district and
20 uniform within the class or subclass of improvements on
21 land, and personal property which the respective taxing

1 powers may have directed to be subject to the tax levy.
2 Now, it will be seen that this amendment was directed
3 to taxes on land, and here I must digress for a minute to
4 say that in the Report, there are certain words of art
5 which are familiar to tax lawyers but are not at all
6 times familiar certainly to laymen or even to sometimes
7 other lawyers. When we talk about a direct tax in the
8 Report, we mean a tax on land or a poll tax, a capitation
9 tax. Generally speaking, this is the definition, and
10 all other taxes are called excise taxes, and this defini-
11 tional dichotomy carried forward in the Report.

12 Secondly, when we talk about assessment of
13 taxes, we talk about the act of fixing the tax liability
14 and assessments can be made not just as to real estate
15 taxes where you are accustomed to thinking of the deter-
16 mination of the assessments fixing the tax bed, but it
17 can be made in all kinds of taxes and the office of the
18 assessment can be in the income tax agent determining
19 the liability or it can be in the Legislature itself fix-
20 ing the instance, so bear in mind that as we go through
21 here, I am using these words as words of art.

1 Now, as I say, it will be noted that Article
2 15, while it did state with precision that there should
3 be proper classification with respect to the property
4 tax or the direct tax that could be levied in the State,
5 said nothing about proper classification in the case of
6 excise taxes. The Committee has sought to fill this
7 deficiency in the language that we will suggest to the
8 Commission at a later time by making it, by making sure
9 that it, that assessments of indirect taxes as well as
10 direct taxes shall be so far as possible uniform within
11 a given class.

12 Now, this is already the law, as I say, with
13 respect to real estate taxes. Now, the final Section of
14 Article 15 can be found at the top of Page 8 of your
15 Report, and it says, Yet fines, duties or taxes may
16 properly and justly be imposed, or laid with a political
17 view for the good government and benefit of the commun-
18 ity.

19 Now, just what this language means has been
20 something that has been discussed between lawyers and
21 laymen interested in tax matters since the very early

1 times. I remember when I first came to the Bar and was
2 under the tutelage of Mr. Francis J. Carey, who was
3 recognized at that time as one of the leading, if not the
4 leading local tax practitioner in the State, I was told
5 that this Section was in his judgment the authorization
6 to impose an indirect tax. I have some doubt about the
7 accuracy of that because, as I have said earlier, it
8 would seem that the General Assembly has plenary power
9 to tax and yet there can be found a number of statements
10 throughout the lexicon of tax matters in the State
11 which indicate that political view tests the thing which
12 would permit, for example, the imposition of an income,
13 a graduated income tax in this State. It adds really
14 nothing, and it has been eliminated from the concept of
15 new Article 15 as it will be suggested by the Committee.
16 Now, there is one further thing that has to be discussed
17 and understood before we get down to a specific con-
18 sideration. In 1956 there was a concerted effort on the
19 part of the Legislature to permit the separate classi-
20 fication of land. Bear in mind the language I have
21 read to you up to this point and contained in the 1915

1 amendment to Article 15 dealt with the classification
2 and subclassification of personal property with refer-
3 ence to the assessment of property for direct taxes.
4 In 1956 it was considered desirable and necessary to
5 permit the separate classification of land for the pur-
6 poses of assessing farm property. There had been a
7 great deal of consideration given in the press and in the
8 halls of the General Assembly about the problem of in-
9 creasing land values in the State, particularly in
10 Counties like Montgomery County and in Baltimore County,
11 which were still actively devoted to farm or agricul-
12 tural use but which could be sold for very high prices
13 for development, let us say.

14 The General Assembly decided to authorize
15 the State Department of Assessments and -- the State Tax
16 Commission, to separately classify this land and put a
17 lower valuation on it. This, they did. Subsequently,
18 the matter came before the Court of Appeals as to the
19 validity of the act of the Legislature which authorized
20 this separate classification of land and the Court of
21 Appeals ruled that the act was invalid because Article 15

1 did not permit the separate classification of land and
2 hence the attempt to so classify it by the General Assem-
3 bly without constitutional authority was invalid. As a
4 result of that, the agricultural interests in the State
5 proposed to the General Assembly, and it was adopted ,
6 two amendments to the Constitution, one which is found
7 in present Article 15 and authorizes the separate classi-
8 fication of land for such purposes as the General
9 Assembly may desire, and also in Article 43, the General
10 Assembly passed a bill which would amend that Article
11 to say as follows:

12 Land which are inactively devoted to farm or
13 agricultural use shall be assessed on the basis of such
14 use and shall not be assessed as if subdivided or on any
15 other basis. So the agricultural interests and those
16 interested in the preservation of open spaces launched
17 a two-pronged attack on this subject. The General Assem-
18 bly accepted this. The Constitution was amended in two
19 respects. It was submitted to the vote of the people
20 in 1960. It was very strongly backed editorially by the
21 Baltimore Sun and by other less well-known newspapers in

1 the rural areas, but the Sun gave it very strong backing,
2 and the amendment was passed by the vote of the people
3 over a 3 to 1 vote. Now, the only other thing that has
4 to be known about this is that in a more recent case,
5 coming from upper Montgomery County, the Court of Appeals
6 ruled that the test was how the land was used, which is
7 what the amendment really said, and not what the person
8 who owned the land was or where he lived or whether he
9 was the person who liked to live on a nice estate and
10 look out at the cows grazing or a fellow who actually got
11 out there and did the work himself. But if the land
12 was used, it was "actively devoted to farm or agricul-
13 tural use", then the land was, or could be assessed for
14 this purpose and should be assessed for this purpose and
15 not at any higher valuation.

16 Now, the solution that the Committee came to
17 with respect to this problem, I will discuss in a moment,
18 but suffice it to say that the Committee did have a
19 number of hearings with the people who are interested in
20 agriculture in the State, the Farm Bureau and the Grange,
21 both appeared at public hearings, strongly supported the

1 retention of this language in the Constitution. The
2 State Board of Agriculture passed a resolution, your
3 present deponent saying naught at that particular time
4 because I didn't want to be charged with wearing too
5 many hats in this situation, by a vote of 10 to nothing
6 or 9 to nothing, the State Board of Agriculture strongly
7 recommended the retention of this particular language.
8 On the other side of the coin, the State tax administra-
9 tors, while believing that farm assessments, bona fide
10 farm assessments should get the benefit of a lower
11 valuation, felt, however, that the completely subjective
12 test that is found in Article 43 should not be permitted
13 to stand, and its rigidity should be replaced by a more
14 flexible test that would permit the Legislature to
15 classify land for agricultural use, and assessments could
16 be made accordingly.

17 The Committee accepted this, sort of a middle
18 ground. They did not eliminate, or does not recommend
19 the elimination from the Constitution of a specific
20 direction toward this problem, and I think this was done
21 primarily because, well, for two reasons. One is, I

1 think, every Member of the Committee feels this is a
2 sound thing to do, that is to say, to classify land devoted
3 to farm or agricultural use differently from other lands;
4 and secondly, there was passed, as you all will recall,
5 at one of the earlier sessions of this Commission, a
6 general guideline rule which said to the effect that where
7 a matter has been presented to the people in the very
8 recent past, where the matter has been discussed with
9 some degree of clarity, hopefully some degree, that
10 these decisions made by the people should not be summarily
11 rejected by this Commission.

12 If there is ever a situation which would
13 admit the application of this rule, it is this situation
14 where you have the Court of Appeals throwing the whole
15 program out and the Legislature coming right behind it
16 and reinstating the program, a great deal of conversation
17 having been had in the newspaper and other news dissem-
18 ination media and the people accepting the idea by a
19 better than 3 to 1 vote. It is for this reason that you
20 will find at the end of Article 15 a particular mention
21 of property devoted to agricultural use.

1 Now, we have developed two philosophical
2 concepts which are to be found in the new Article 15,
3 and I should now direct your attention to a third be-
4 cause the third is even more novel than the first two.
5 Actually, the direct burden of taxation depended upon the
6 amount of taxes you pay which depend in turn upon the
7 direct assessment of the tax made upon you. However, as
8 the Report points out, there is another concept of tax
9 burden which, for the lack of a better way of expressing
10 it, we call the indirect burden, and the indirect burden
11 comes about by reason of the fact that your neighbor
12 has been under assessment, and I am using the word assess-
13 ment, bear in mind, in the broad sense and not merely
14 in the property sense, although the property or direct
15 tax field is the best illustration of this particular
16 point. The underassessment, conscious or unconscious
17 of the taxpayer, means that the other members of the body
18 politic are going to have to shoulder an increased burden
19 because if government requires X-number of dollars to
20 operate, these X-number of dollars must be extracted
21 from the citizenry in varying proportions, and this is

1 .fine as long as you have a general and equal classifica-
2 tion and uniformity, but when underassessment takes
3 place, then the burden is disproportionate, and it is
4 this point that you begin to get perhaps an element of
5 unfairness.

6 This has been recognized, I might say, by
7 many courts, and there is a rule established, I think our
8 Chairman has some part in this in a case in the Court
9 of Appeals some years ago which says one of the remedies
10 that a taxpayer has in Maryland if he feels there has
11 been an underassessment against his neighbor is to
12 appeal his neighbor's assessment. While this is not
13 an exclusive remedy, it might have been thought so at one
14 time after the Buck case was decided, but a later case
15 ruled it wasn't; still, this is a right that you have
16 if you want to exercise it. But there is another type of
17 underassessment which is more easily discernible and
18 something that doesn't require the somewhat esoteric
19 procedures of appealing another person's assessment, and
20 one which can be isolated and put on the table, and we
21 can all look at it, and that is the exemption, because

1 an exemption is just another way of underassessment --
2 and in our State, for example, in the property tax field,
3 and again I am using this because it illustrates what I
4 am talking about, there are 60 separate exemptions of
5 varying kinds from the property tax, so that the certain
6 social club or union hall in Cumberland could be
7 exempted from tax, but one in Easton would not be, so that
8 a literary society's meeting house in Crisfield could
9 be exempt, but a similar one in Port Deposit might not
10 be.

11 What we strive to do, then, is to correct this
12 imbalance, and we do it very simply by saying in effect
13 that as far as all taxes are concerned exemption should
14 be uniform within classes, and this is the third concept
15 and this is new in the present Constitution. To re-
16 capitulate therefore, what we are dealing with here is
17 an attempt at uniformity, and what we are saying is that,
18 or what we need for uniformity is the requirement that
19 taxes and exemptions be imposed by uniform rules to
20 everybody.

21 Now, that is the first touchstone of the

1 solution -- the uniform rules. Now, uniform rules is
2 but a first step. You need a second step to say, in
3 effect, uniform rules to whom. Well, uniform rules to
4 the classes or subclasses of either taxpayers or proper-
5 ty, whether it be real or personal or the interacts
6 between the two, namely the event, the taxable event.
7 If you have, or if you give the Legislature power to
8 classify, and if you require that uniform rules be made
9 within these proper classifications, then your tax struc-
10 ture will be just about as fairly applied as it can
11 possibly be fairly made, and that is what, on Page 18
12 and 19, the new language of Article 15 says.

13 It says that no assessment, using that word
14 in the broad sense, or any exemption imposed by this
15 State shall be made except pursuant to uniform rules with-
16 in classes or subclasses of taxpayers, property or
17 events as may be provided by law, and with respect to
18 taxes on property, such classes may include property
19 devoted to agricultural use.

20 THE CHAIRMAN: Any questions?

21 Mr. Scanlan?

1 MR. SCANLAN: Dick, I don't read the language
2 to do this, but I wanted to get your view. Does the
3 language, as you have suggested it there at the top of
4 Page 19 reading, may include property devoted to agri-
5 cultural use, you don't intend by that in any way to
6 freeze the result of the Alsop case into the new Consti-
7 tution? In other words, the Legislature in the future
8 by uniform rules could decide whether or not property
9 was devoted to agricultural use for the purpose of
10 obtaining the exemptions.

11 MR. CASE: That is exactly the purpose of it.

12 THE CHAIRMAN: Mr. Miller?

13 MR. MILLER: Under this language, would the
14 factors which you are probably familiar with, certain
15 municipal corporations will invite somebody over to the new
16 factory and say, We will give you tax exemption for
17 X-years if you will employ so many people. Would that
18 sort of thing be prohibited by this?

19 MR. CASE: Well, Congressman Miller, exemptions
20 from property taxes of that kind can only be permitted
21 by direct act of the Legislature. This is done, for

1 example, in Allegany County. This is one of the better
2 illustrations of it, and there is an exemption, I think,
3 in Carroll County for new industry that comes into play.
4 The purpose of this is to permit this if the Legislature
5 wants to do it, but it has to be uniform throughout the
6 State.

7 MR. MILLER: But I was addressing my thought
8 particularly to municipal taxes where a particular town
9 which has a real estate tax similar to the State and
10 County tax says, Well, if you will build a factory here,
11 or open a printing plant, or whatever it is, we will
12 give you tax exemption so far as the City taxes are con-
13 cerned for X-years. Now, would this prohibit that? I
14 don't know, I have no brief either way.

15 MR. CASE: Within the City, Congressman, it
16 would be permitted from City taxes, but the point is that
17 it would have to be uniform within that City, so that
18 if somebody else wanted to come in and get a similar
19 exemption, they would be required to give them that exemp-
20 tion.

21 MR. MILLER: But the neighboring City, if it

1 didn't have that, wouldn't have to have it?

2 MR. CASE: As to City taxes, wouldn't have
3 to have it.

4 THE CHAIRMAN: Mrs. Bothe?

5 MRS. BOTHE: On this agricultural use inclu-
6 sion, is that being put in there only to show our respect
7 to the present Constitution, or in other words, could
8 agricultural land be classified as such without this
9 language being in it?

10 MR. CASE: Under the draft, it could be.

11 MRS. BOTHE: In other words, the purpose is
12 simply to quiet the fears of those who don't believe it?

13 MR. CASE: Correct. It is certainly a purpose.

14 THE CHAIRMAN: Any further questions?

15 Mr. Clagett?

16 MR. CLAGETT: However, this language does
17 not apply to the active use to which the land is being
18 devoted, and it actually does permit ownership being the
19 criteria rather than the actual use of the land?

20 MR. CASE: If the Legislature sets it aside.

21 MR. CLAGETT: That is not so good.

1 THE CHAIRMAN: Mr. Haile?

2 MR. HAILE: Mr. Chairman, the present Section
3 says that, all taxes, State and County, shall be uniform
4 within each classification or subclassification. I don't
5 see that same language in the new proposed Section.

6 THE CHAIRMAN: Which part, the State and
7 County part?

8 MR. HAILE: The part about, the new Section
9 says, no assessment.

10 MR. CASE: Let me answer that. It is very
11 important that it be left this way and not say taxes
12 because the word taxes in that Section is the thing that
13 got Article 15 way off the track and was off the track
14 for about twenty years in the State, longer than that.
15 I will give you the reasons for it.

16 In a case called Leser versus Lowenstein,
17 the Court of Appeals in discussing the question of
18 whether or not parts of Section 15 were self-executing
19 or not, said in effect, that this Section, meaning a
20 part of 15, applies to taxes, picking out the word you
21 have just picked out, and went on to discuss the thing.

1 Later on, this matter was picked up in another decision by
2 the Court of Appeals, called Rogan versus Calvert County,
3 and the Court of Appeals held in that case or seemingly
4 said in that case that Article 15 applies to taxes and
5 not to assessments, and this led to the Attorney General
6 ruling, a very long and extended opinion, that Article
7 15 didn't apply to assessments so that you could have
8 uneven assessments within a given area, that it only
9 applied to the tax rate, taxes.

10 This is perfect nonsense. The way to make the
11 tax system fair is to have the base fair, the assessment
12 fair. Once the assessment is fair, the rest will fall
13 together. It was not until, I guess the Alsop case was
14 it, that this was straightened out. In the Gales case,
15 Jay Brohm, who, of course, is a very smart guy, put this
16 whole issue back in proper focus by saying that the Court
17 would have been all wrong and the Attorney General had
18 been wrong if what they said was, in effect, that Article
19 15 shouldn't apply to assessments. He said really
20 assessments is the heart of the tax program. We want
21 this is
to make it clear that/the equality of the assessment.

1 MR. HAILE: Well now, suppose the County would
2 impose one tax rate on the upper end of the County where
3 the farmers live and another rate in the metropolitan
4 area. Would that be legal under our new Constitution, two
5 different rates?

6 MR. CASE: Let me say this: This is done, and
7 it has been done in our County, so that, which gives you
8 another reason. In other words, quite obviously getting
9 back to this point of like people being treated similar-
10 ly in similar situations, the tax rate has got to be
11 the same. Due process would require this unless there
12 are sound legislative reasons for making it different.
13 Now, in Baltimore County for a number of years, people
14 in the metropolitan districts paid a larger rate of tax
15 than those in the rural parts of the County because the law
16 permitted the County Commissioners to impose a tax with-
17 in the district to help service the water and sewer
18 lines. This is perfectly all right, because people in
19 the metropolitan district get a great deal more for their
20 money than people living out in the rural areas. So,
21 here was a perfect example of where you did have, indeed,

1 a Baltimore County tax rate. It used to come out on the
2 same bill, \$1.80 in Towson and around \$1 up County.

3 THE CHAIRMAN: The same thing, of course, was
4 true when the Baltimore City, following the new and next
5 act in 1918 where you had the new annex gradually subjected
6 to the full City rate over a period of years.

7 Mr. Scanlan?

8 MR. SCANLAN: Dick, does the word, subclass,
9 have a special term of art, an indispensable term of art
10 that requires its inclusion? I would think the word,
11 class, would suffice.

12 MR. CASE: Class, could be personal property,
13 but then subclass could be whether it is inventory or
14 stock in trade or something like that. It is a word of
15 art which seems to be essential.

16 THE CHAIRMAN: Mr. Martineau?

17 MR. MARTINEAU: I wonder if the first part
18 you say, no assessment, then in the last part with respect
19 to agricultural use, you say, with respect to factors --
20 with respect to assessments on property, as to classes.

21 MR. CASE: You have a good point there.

1 THE CHAIRMAN: You see where the change is,
2 Page 19, second line, strike taxes, and insert, assess-
3 ments.

4 Mr. Sykes?

5 MR. SYKES: I had a question that went a little
6 bit beyond that. Actually, the only thing that that last
7 clause really talks about is real property, and it seems
8 to me that any system of classification is going to
9 include property devoted to agricultural use. The ques-
10 tion isn't the impingement of that property, the question
11 is the extent to which the fact of the property is
12 destroyed to agricultural use may be made a basis for
13 classification, and I am a little bit afraid of the
14 point that I think Al Scanlan made, the word, devoted
15 to agricultural use, may be interpreted as having a
16 fixed constitutional meaning, and I think it ought to be
17 made perfectly clear that the Legislature can determine
18 the extent to which classification may be based on the
19 agricultural use of the real property; and I think that
20 this could be accomplished by putting a period after the
21 general classification provision, taxpayers property or

1 event as may be provided by law and saying, classification
2 of real property may be based on agricultural use thereof
3 as provided by law.

4 THE CHAIRMAN: Since that suggestion has been
5 made, I would like to make another comment; let me make
6 it desirable not to make it use that language, and this
7 is a matter that the Commission has got to consider very
8 carefully and ought to have some discussion about. One
9 of the real difficulties which this agricultural exemp-
10 tion is designed, agricultural special assessment is
11 designed to permit, indeed to encourage, is to not merely
12 the use of land for agricultural purposes as a matter
13 of good supply near the large metropolitan areas
14 which we mentioned as one of the reasons, but rather as
15 a means of slowing down the complete utilization of all
16 open area for improvements and all too often, unplanned
17 and unwise improvements.

18 So, when you have a real estate developer who is
19 looking ahead ten or fifteen years, goes out in the
20 country and buys a large tract of land, if as soon as he
21 does that, you begin to assess that land on the basis of

1 subdivision values, far beyond its rural value, then you
2 put on that developer a pressure to immediately utilize it
3 for his highest purpose, its densest use than the one that
4 would be most productive in dollars to him. It seems
5 to me that this is a shortsighted public policy, and
6 while as the Chairman of the Committee mentioned, this is
7 not a question that this Commission should resolve, we
8 certainly do want to make it abundantly clear that the
9 Legislature has ample authority to permit lower assess-
10 ments, tax advantage, if you want, on property that is a
11 development of which is delayed or deferred. In recent
12 years there has been considerable feeling that there ought
13 to be special tax advantage and indeed, in some areas,
14 it is in effect today for what are called, I think, view
15 easements where an owner of a large unimproved property
16 along a public highway, particularly the new expressways,
17 non-access ways, in consideration of a reduction in
18 taxes will agree to maintain it, either his farmland
19 or open land without billboards or buildings or residen-
20 tial developments, and here again, this is a broad ques-
21 tion of open policy that is one for the Legislature, but

1 I think it behooves us to make certain there isn't any
2 question at all about the Legislature's power to do
3 this.

4 My only concern with this last clause is
5 that by referring specifically to agricultural use, it
6 may tend to permit the argument that the Legislature
7 can't classify merely on an open land use. And it seems
8 to me that the phrase, and this would follow somewhat the
9 suggestion that Mr. Sykes made, that the phrase ought
10 to be broad enough to make it abundantly clear that
11 the Legislature can authorize assessment of taxes on
12 land with a view to deferring or delaying the urbaniza-
13 tion of that land until better planning can provide for
14 it.

15 Mrs. Bothe?

16 MRS. BOTHE: Mr. Chairman, in view of your
17 comments, and the answer to a question which was raised
18 earlier, I would move that that clause be deleted entire-
19 ly, that is after provided by law, the following provision
20 because it is only an invitation to the problem that you
21 suggest as well as giving no added protection to the

1 classification of agricultural land. I think if we
2 make it clear in our work book and records that our in-
3 tention was not to be, repeal Article 43 in reference
4 to agricultural differentiation, that this would suffice,
5 and that we need not clutter up the Constitution with
6 it. Besides, I think, long before the Constitution wears
7 out that this whole question of extra taxation for sub-
8 divisions is going to be inaccurate. It isn't like
9 paupers, taxed, and I hate to see something of this kind
10 go into a streamlined Constitution. For that reason,
11 I will move the last phrase be deleted.

12 THE CHAIRMAN: I will put your motion down,
13 but I did not mean to suggest that the phrase doesn't
14 add anything. I think as to agricultural use, there is.

15 Is there a second? Any second? The motion
16 fails for lack of second.

17 Mr. Sykes, did you want to make any further
18 comment with respect, or a motion with respect to your
19 suggested language?

20 MR. SYKES: I would like to move that the last
21 sentence be rewritten and put a period after the word, law.

1 And that a sentence be added in substance to say, without
2 limiting the power of the Legislature to classify on
3 other grounds, the classification of real property may
4 be based on agricultural use thereof as provided by law,
5 or some such formulation.

6 MR. CASE: No.

7 THE CHAIRMAN: Is there a second?

8 MR. CASE: Let me merely say -- no second?

9 THE CHAIRMAN: Apparently not.

10 MR. CASE: The Committee rewrote this language
11 at least four times, trying to come up with something
12 that would be proper and acceptable and not, you know,
13 that it couldn't be better a fifth time. But this is
14 really a tough little technical problem here, just how
15 to get this worded property, and I can say that this was
16 the best judgment we could come up with. Now, we did not,
17 I will say tha, we did not consider the Chairman's
18 suggestion that perhaps to broaden this constitutional
19 provision to deal with open spaces such other than agri-
20 cultural because I think we felt, at least I feel this
21 way, and I would hope the Committee Members would

1 agree that the power to subclassify as stated in the
2 first part would be sufficiently broad to take care of
3 that.

4 THE CHAIRMAN: Would it hurt your last clause
5 if you said, agricultural or other open land use?

6 MR. CLAGETT: I was going to say, Mr. Chair-
7 man, or open space use.

8 MR. CASE: I think it would do the trick if
9 the Commission would like it.

10 THE CHAIRMAN: I think there ought to be some
11 discussion of this point.

12 Mr. Clagett?

13 MR. CLAGETT: I make a motion that the words, or
14 open space, be added at the end of that sentence.

15 DR. BARD: To agricultural use, or open space
16 use.

17 THE CHAIRMAN: We could say agricultural or
18 open space.

19 MR. CLAGETT: That reads better.

20 THE CHAIRMAN: Is there a second?

21 DR. BARD: I second it.

1 THE CHAIRMAN: Discussion.

2 Mr. Bond?

3 MR. BOND: I apologize for being late, but
4 I was on the Committee that considered this language,
5 and therefore, I am asking your indulgence while I do
6 discuss the matter a little bit. On our point, Mr. Eney,
7 about the limiting language to agricultural, I have two
8 comments. First, you have the word, may, which it seems
9 to me is permissive and can go a lot further and second,
10 again on the matter of public policy, on how the people
11 have spoken and the political nuances which surround this
12 proposed new Constitution, Mr. Case, I am sure has given
13 the history of the desires of the people of this State
14 that agriculture be given a specific niche in the Consti-
15 tution. They haven't spoken as to openspaces, although
16 I think it is very commendable. A perfect example is
17 the area across from Mount Vernon which could go into
18 smokestacks if we are not careful. I wonder about --
19 we may have something other than open spaces which
20 probably hasn't occurred to other Members of the Commis-
21 sion, and I feel it might be better to leave it as pro-

1 posed by the Committee because you do have the permis-
2 sive, may, and also the fact that the people have spoken
3 if they do want agriculture given special consideration.

4 THE CHAIRMAN: Dr. Bard?

5 DR. BARD: I think the concept of open space
6 is one that is highly important in the 1960's and in a
7 sense, it would reflect some of our concerns which are
8 so very vivid in this area, particularly in regard to
9 planning, et cetera, and I think that it would move us
10 to more modern view if we did include it.

11 THE CHAIRMAN: Any further discussion?

12 MR. SCANLAN: As we recall the law of zoning,
13 similar in the field of taxation, the open space concept
14 is a novel one and possibly the permissive, may, the
15 Court would say it may include, and on the other hand,
16 it may not include, open space land. I hadn't thought
17 about it before I came here this morning, and I think
18 the additional phrase would be helpful.

19 THE CHAIRMAN: Any further discussion? Ready
20 for the question? The question arises on the motion to
21 amend the proposed Section appearing at the bottom of

1 Page 18, top of Page 19, by striking out the last word,
2 use, and substituting therefor the phrase, for open
3 space use. All those in favor, please signify by saying
4 Aye.

5 (Chorus of Ayes.)

6 THE CHAIRMAN: Contrary, No. The Ayes have
7 it.

8 MR. SYKES: Mr. Chairman, I have a question.
9 Was any action taken on the suggestion about the use of
10 the word, taxes? The word, taxes, is being eliminated?

11 THE CHAIRMAN: The top of Page 1 in the second
12 line, the word, taxes, was stricken, and the word, assess-
13 ments, substituted.

14 MR. SYKES: I wonder if he would need that,
15 just with respect to property. It is really real proper-
16 ty. You have exemption and got the whole business.

17 THE CHAIRMAN: I wonder if you couldn't take
18 out the whole phrase, with respect, and say, in such
19 classes.

20 MR. CASE: You can.

21 THE CHAIRMAN: In the absence of objection, we

1 will strike the whole phrase, with respect to taxes on
2 property, so the Section would read, and such classes
3 may include such property devoted to agricultural and
4 open space use.

5 Dr. Burdette?

6 DR. BURDETTE: I have a related question. I
7 don't know what would happen if somebody wanted to argue,
8 if it were brought up that this language coming, and
9 such classes may include such property devoted to agri-
10 cultural or open space use, if the argument were directed
11 to the view that agricultural use and open space use
12 must be in the other classes. I think the language can
13 be so read. It is certainly not intended. Much of my
14 commentary here comes from my observation that courts
15 get new meanings of land as years go by.

16 THE CHAIRMAN: I don't follow your question
17 at all, Dr. Burdette.

18 DR. BURDETTE: I gather the intent of the
19 Committee and the Commission is that there may be clas-
20 sification for agricultural use or for open space use.

21 THE CHAIRMAN: Right.

1 DR. BURDETTE: The language actually says,
2 such classes. Now, these are the classes already men-
3 tioned, I suppose. Such, carries that, may include
4 property devoted, so this property may be put in the
5 other class which, of course, on its face is redundancy.

6 THE CHAIRMAN: Is your suggestion that the word
7 should be, classification, instead of, classes?

8 DR. BURDETTE: Well, yes, such classification,
9 would help it. My own language, I am not competent to
10 draft the technical language.

11 THE CHAIRMAN: Isn't the question one of
12 style rather than substance?

13 DR. BURDETTE: Yes, it is, but still/gets over very quickly
14 the change of meaning. I don't think Mr. Case follows
15 what I am speaking about.

16 MR. CASE: You have lost me, Professor.

17 THE CHAIRMAN: I think the substance of what
18 you say could be met by the use of the word, classifica-
19 tion, instead of, classes, and I don't imagine the
20 Chairman of the Committee would have any objection to
21 that. You may have to rephrase one or two of the other

1 words, and I think we better leave it to the Committee
2 on Style. It is just a question of whether the last
3 phrase providing that, classes, includes, property
4 devoted to agricultural use, means that that is included
5 within one of the previous classes.

6 MR. SYKES: Mr. Chairman, there is a little
7 more than a question of style, because you use, classes,
8 and subclasses, up above, and here you say, such classes
9 may include property devoted to these things, and
10 the provision may be read to mean that there has to be a
11 unitarian class to property devoted to agricultural use.
12 You can't subclassify within that class, and I think
13 it is important to talk about the basis of classification
14 rather than what the classes do.

15 THE CHAIRMAN: Well, do you have any specific
16 language to suggest? You can't do it by substituting
17 the word, classification, for classes, because you wouldn't
18 say, classification may include.

19 MR. SYKES: This may be a last gasp, I made a
20 suggestion, and it didn't get a second, what I mean is,
21 that such classification may be based as provided by law
on the agricultural or open space use of the property.

1 DR. BURDETTE: That is much clearer. That
2 just says something flatly.

3 MR. CASE: It is not clear to me, and it is not
4 the existing language.

5 MR. SYKES: Well, neither is this.

6 MR. CASE: It is fairly close. I would say
7 that you might say such classes or subclasses.

8 MR. SYKES: That would be better.

9 DR. BURDETTE: Yes, it would.

10 THE CHAIRMAN: Would that be acceptable,
11 such classes or subclasses?

12 MR. SYKES: I think so.

13 THE CHAIRMAN: Dr. Burdette?

14 DR. BURDETTE: It is still subject to reading
15 two ways, and maybe that is intended. There is a great
16 redundancy here. The first part of the Section says --

17 MR. CASE: Let me interrupt, Professor Bur-
18 dette, by saying it is an intentional redundancy here.
19 That is the point I don't think you got.

20 DR. BURDETTE: I understand there is.

21 MR. CASE: With that correction you can argue

1 against the redundancy, but there is an intentional
2 redundancy for reasons I have stated.

3 DR. BURDETTE: You see the purpose of the
4 redundancy is to give the Legislature a hint of the in-
5 tent of the framer.

6 THE CHAIRMAN: Right.

7 DR. BURDETTE: Well, if you are just going to
8 take the redundancy in its simplest term, it says,
9 agricultural property may be put in with urban property
10 which still is possible under this arrangement, but if
11 it says no more than that, it almost says no more
12 than that to me. It doesn't quite clearly say. It says,
13 may be separate from urban property. Unless we get in
14 subclasses, but even then, I think it almost needs some
15 language as, may include separate classification of
16 property devoted to agricultural or open space usage.
17 But that is not legal language.

18 MR. SYKES: Mr. Chairman, I point out that
19 the current language of the Constitution speaks about
20 the assessment on the basis of a certain type of use, and
21 that the language I suggested would carry forward much

1 more than the present language.

2 THE CHAIRMAN: Let's have your suggestion
3 again.

4 MR. SYKES: And such classification may be
5 based upon the agricultural or open space use of property.

6 THE CHAIRMAN: Is there a second?

7 DR. BURDETTE: Would that include the subclassi-
8 fication?

9 MR. SYKES: Such classification would include
10 then classes and subclasses.

11 THE CHAIRMAN: You second, Dr. Burdette?

12 DR. BURDETTE: I second.

13 THE CHAIRMAN: Give us the language again.
14 And such classification --

15 MR. SYKES: -- may be based upon agricultural
16 or open space use of property.

17 THE CHAIRMAN: Any comment, Mr. Case?

18 MR. CASE: No, I think the Committee has
19 worked hard on this language, and thinks it ought to be
20 the way it is written here, and I will let it go to a
21 vote.

1 MR. SCANLAN: I think the phrase, may be
2 based on, is less permissive than the phrase, may include,
3 and I think he may be drawing the more narrow proviso.

4 THE CHAIRMAN: Mr. Miller?

5 MR. MILLER: I don't follow too much this
6 argument about classes and subclasses. It would seem
7 to me in our effort to shorten things if we just struck
8 out the first two words on the next to last line and
9 went on as provided by law and may include property, et
10 cetera. Then, that would include all the classes you
11 want to put it to.

12 MR. SYKES: If Mrs. Bothe will make her motion
13 again, I think maybe I would second it.

14 THE CHAIRMAN: Is there any further discussion?

15 MR. MILLER: I will move to substitute an
16 amendment to just strike out, such classes, the first two
17 words on the next to the last line.

18 THE CHAIRMAN: Is there a second to the sub-
19 stitute?

20 DR. BURDETTE: I would be inclined to second
21 that. I am a little afraid of this language.

~~THE CHAIRMAN: Is there a second for the~~

1 substitute motion? If not, the substitute fails for
2 lack of a second. Any further discussion on Mr. Sykes'
3 motion? Ready for the question? Mr. Sykes' motion is
4 to amend the Section by putting a period after the word,
5 law, in the second line on Page 19; I am sorry -- strik-
6 ing everything after the comma after the word, law, in
7 the second line on Page 19 and substituting the follow-
8 ing phrase: And such classification may be based upon
9 agricultural or open space use of property. All those in
10 favor, please signify by a show of hands. Contrary?
11 The motion is lost, 3 to 16.

12 Mr. Bond?

13 MR. BOND: I would like to make one further
14 point that use can be both agricultural --

15 THE CHAIRMAN: Let me interrupt you a moment.
16 I want to make clear that it is my understanding that
17 prior to the other motion, there was no objection to
18 the addition of the phrase, for subclasses, after the
19 word, classes, in the third line on Page 19. Does any-
20 body object to that? If not, we will consider that
21 change as made, so that the last phrase now presently
~~before you is, and such classes or subclasses may include~~

1 property devoted to agricultural or open space use.

2 Now, Mr. Bond?

3 MR. BOND: I would like to point out for the
4 record that agricultural and open space usages are not
5 in the alternative, and the word, or, leads to redundancy
6 and vagueness. You can have open space use and agricul-
7 tural use on the same piece of land.

8 THE CHAIRMAN: It seems to me if you use the
9 word, and, then you would have more trouble.

10 MR. CASE: I think his statement for the rec-
11 ord is all you need.

12 THE CHAIRMAN: Any further comment with res-
13 spect to this Section? I would like to make just two
14 observations so that the record will be abundantly clear.
15 In the use, in this Section of the phrase, any tax imposed
16 in this State, I take it, Mr. Case, that the Committee
17 is recommending that this provision of the Constitution
18 be applicable to taxes imposed at every level of govern-
19 ment.

20 MR. CASE: That is correct.

21 THE CHAIRMAN: State, local, municipal, every-

1 thing.

2 MR. CASE: That is correct.

3 THE CHAIRMAN: Secondly, you commented in
4 answer to somebody's question with respect to an exemp-
5 tion that it is possible today if it be permitted by
6 the Legislature. Now, if the Commission approves the
7 tentative Report of the Committee on Political Subdivis-
8 ions, the County and other local subdivisions will have
9 full taxing powers except as withdrawn, so that this
10 would permit Counties, and if they in turn permit
11 municipalities, permit municipalities to grant special
12 exemptions such as manufacturers' exemptions or indus-
13 trial exemptions of various kinds. I take it your answer
14 to the earlier question is still the same, that the
15 Counties' right to do that, notwithstanding the broad
16 grant of power under the Constitution to local subdivisions
17 will be subject to the limitation of this Section, that
18 it must be a reasonable classification for all such
19 exemptions.

20 MR. CASE: That is right.

21 MRS. BOTHE: A question to Mr. Case: This

1 means about sixty exemptions granted to the Elks Lodge,
2 or the Workmen's Home and whatever it is, would be uncon-
3 stitutional.

4 MR. CASE: Not sixty, but there are some.

5 MRS. BOTHE: How many?

6 MR. CASE: About a half dozen.

7 DR. BARD: Can I ask a question, Mr. Case?
8 There would be no problem, for example, in respect to
9 exemptions of persons because of their age and property
10 and wealth?

11 MR. CASE: That would be as classification.

12 DR. BARD: Just wanted to know.

13 MR. CASE: Article III, the lottery. That
14 starts on Page 25. It is happy for me that we can get
15 into a broad plateau here of philosophical concepts
16 rather than just whether you are going to express some-
17 thing one way or the other. Here we are talking about the
18 lottery because Article III says that no lottery grant
19 shall ever hereafter be authorized by the General Assem-
20 bly. This raises the question of whether or not you
21 want your Constitution to prohibit a lottery. Very

1 briefly, the background on lotteries is simply this:
2 Lotteries are as ancient as most anything you can really
3 think about that have been brought forward into modern
4 day living. Historians say the lottery was first begun
5 in Italy and a great many of the public buildings at
6 that time, the canals, and so on, were financed in that
7 country by the lottery. In England in the early 17th
8 Century, lotteries became very fashionable with the people
9 who particularly, the merchants who sold their goods
10 through lotteries, and the East India Company was well
11 recognized in this area until the Crown decided that
12 one of the things that could perhaps finance the improve-
13 ment of the various harbors there was to get a cut out
14 of these lotteries. So they did exactly that. In this
15 country, the concept of the lottery has been thought to
16 have been an antecedent of the ones I have just mentioned,
17 and it is very interesting to note the great amount of
18 public finance that was done in the early period of time
19 in our country through the lottery.

20 Now, our Committee held a hearing with respect
21 to whether or not this provision should be retained, and

1 at that hearing and through our research, it was developed
2 that such things as the Cathedral, Catholic Cathedral
3 in Baltimore was built partly with the proceeds of a
4 lottery. Several of the buildings on the University of
5 Maryland campus, Baltimore City, were financed through
6 the proceeds of a lottery. Other public buildings and
7 attributes were similarly financed, but in the middle
8 1840's and I am not talking about the 1800's, the
9 lottery got to be a racket because the way it was run
10 was that the Legislature would make lottery grants
11 and people would have the right therefore to put on lot-
12 teries with the Government getting its cut. A con-
13 certed effort was made and finally culminated, I think,
14 in the middle 1840's to abandon, to provide that there
15 should be no further lottery grants. Now, whether or
16 not this prohibition means merely the right to hold a
17 lottery and that it doesn't proscribe the State from
18 holding a lottery is an issue that has been greatly
19 debated. The only real authority on the subject is an
20 opinion of the Attorney General of Maryland, which says
21 that the ban applies to the State conducting a lottery

1 as well as to the giving or issuing of lottery/grants.
2 The principal witness at our hearing, I guess everybody
3 knows who that was, who came complete with television
4 cameras from three stations, to wit, Mr. Hyman Pressman,
5 argued with some degree of persuasiveness, I thought,
6 that the word, lottery grant, did not proscribe the
7 State, and indeed, the State could at any time conduct a
8 lottery under the present Constitution. But he strongly
9 suggested that this matter was not one of constitutional
10 dimension, and that the question of whether or not there
11 should be a lottery in the State and run by the State
12 as a way or method of gaining revenues for the State
13 should in the last analysis be left to the Legislature
14 and should, therefore, be removed as an absolute pro-
15 hibition from the Constitution.

16 Now, there is just no question about the fact
17 that a lottery is a substitute or a method of financing
18 government. It is something that is evasive as anything
19 can be, and really it is for this reason that I think
20 every man on the Committee opposes a lottery and the
21 recommendation that is being made here does not mean to

1 imply that anybody is in favor of the lottery. I want
2 that clearly understood. A lottery cannot be a supplier
3 of public revenues with any degree of assurance. There
4 is one lottery in this country today, in the State of
5 New Hampshire which is a financial failure, and people
6 who rely upon the lottery are afraid lotteries will not be
7 allowed because they will lose a lot of money, and are taking
8 the people down the primrose path.

9 I think if I might take a minute of your time
10 to read to you the very interesting, the summation of a
11 very interesting article which is very recent, appearing
12 in last month's issue of The Taxes, which is a tax maga-
13 zine and written by an economist in New Hampshire.

14 The article is called, The Lottery as a Source
15 of Public Revenue. He approached this from the economic
16 as well as social ground and particularly did he approach
17 it on the question of the economic value or utility of
18 money. It proved conclusively that a lottery is a de-
19 lusion and a snare which should be avoided. He says, and
20 I am quoting, The lottery as a substitute for or addition-
21 al to usual sources of public revenue not only fails to

1 elicit support from economic theory, it also founders
2 on the standards customarily applied to measure tax
3 efficiency.

4 First, the principle of allocating efficiency
5 is violated in two ways. A, it is violated by charging
6 a customer a price for the service represented by the
7 lottery ticket in excess of cost, including social cost.
8 The marginal conditions for the efficiency of resource
9 allocation are bypassed. The equimarginal principle,
10 applies the marginal social cost of raising the revenue
11 by the tax, must be equal.

12 B, those who buy lottery tickets may be in-
13 duced to save less in anticipation of winning a future
14 prize, thereby affecting the supply of investment goods
15 relative to consumer goods.

16 Second, the burden of the lottery is inequit-
17 able because lower income groups buy more than a propor-
18 tionate share of the tickets. Moreover, the distribution
19 of prices increases income and equality. A recent survey
20 in the State of Massachusetts of the residents of that
21 State who had won in/
 the
 State who had won in/New Hampshire lottery, concluded

1 that four out of five of those who could ~~least~~ afford to
2 gamble bought the tickets. Because of its propinquity
3 and relatively large population, Massachusetts buys
4 more New Hampshire lottery tickets and has more winners
5 than any other State.

6 Third, the cost^s of collecting net revenues from
7 the lottery are very high compared to most types of
8 taxes. In addition to enticing amounts of prize money,
9 there is the special factor of expensive administration
10 in an activity noted for its appeal to the underworld.

11 Four, net revenues could be expected to in-
12 crease during recession and decrease during recovery
13 because of the desire to gamble during rate of high
14 unemployment. It may be concluded that the lottery is in
15 the broadest sense an inefficient means of raising pub-
16 lic revenues.

17 Our Committee developed all of these facts
18 and the facts that appear in the Report, and the matter
19 I have just read to you does not appear in the Report,
20 but I think it is instructive and interesting and should
21 be brought to your attention, but it concluded neverthe-

1 less that the question of the prohibition of the lot-
2 tery should be left to the General Assembly, and it is
3 for this reason therefore, that the Report recommends
4 that Article III, Section 36 be eliminated.

5 THE CHAIRMAN: Any questions.

6 MRS. FREEDLANDER: I want to ask Mr. Case a
7 question. Could a Governor in an emergency situation by
8 executive order permit a lottery?

9 MR. CASE: Well, I don't think that he could
10 now. Certainly not in the present stance of our Consti-
11 tution. If this is eliminated, I don't think I would --
12 I would doubt it very seriously.

13 THE CHAIRMAN: Mr. Haile?

14 MR. HAILE: I have a question arising out of
15 my ignorance, I suppose. Could a lottery bill or act be
16 framed so as to be a tax measure to meet the budget?

17 MR. CASE: Well, it could never be a tax
18 because an elephant can't be a giraffe, and a lottery
19 can't be a tax, but it can be a revenue-raising measure
20 because both an elephant and giraffe run through the
21 jungle and maybe they could go both on the same path.

1 They can both go in the same direction, but they are
2 not exactly alike.

3 DR. JENKINS: Does that mean Yes or No?

4 MR. CASE: In my business, that means neither.

5 MR. MILLER: Isn't a lottery fundamentally
6 a voluntary thing? You couldn't pass a law making it
7 voluntary.

8 MR. CASE: That is right.

9 MR. MINDEL: We ought to be very careful on
10 this. If this comes out, the public is going to
11 erroneously think this Commission favors a lottery, and I
12 think we have to be careful about any statements issued.
13 I think the average person might get the wrong impres-
14 sion. If this Commission comes out and says we favor
15 the elimination of this provision, then we might be favor-
16 ing a lottery and Mr. Case clearly explained we were not.

17 MR. HOFF: Someone might wish to make political
18 hay out of this, too.

19 THE CHAIRMAN: I take it what the Committee is
20 saying is that they are expressing no opinion on the
21 broad moral question, if you want to call it a moral

1 question, as to whether there should be lotteries but
2 they are expressing a decided opinion that there should
3 not be lotteries for the purpose of raising revenues
4 for the operation of State Government.

5 Mr. Scanlan?

6 MR. SCANLAN: In recommending the deletion of
7 this provision, I think the Committee is acting in
8 accordance with the observation of Mr. Justice Holmes
9 who said if the people of the United States want to go
10 straight to hell, I doubt if there is anything in the
11 Constitution that can stop them. If the people of the
12 State of Maryland want a lottery, they will have a lot-
13 tery.

14 THE CHAIRMAN: Any more discussion?

15 Dr. Burdette?

16 DR. BURDETTE: You are making this by unanimous
17 consent, and while I will not raise an objection, I
18 should like to be on record that I should like to have the
19 Constitution of Maryland prohibit a lottery and would so
20 recommend to the citizenry, and I do that on moral
21 grounds as a person.

1 THE CHAIRMAN: Any further comment?

2 MR. CLAGETT: Mr. Chairman, I think it might
3 be well to move that, and I make this in the form of a
4 motion so that if Dr. Burdette or anyone else feels on
5 any ground that they would rather oppose, they will have
6 a chance to do so.

7 THE CHAIRMAN: Rather what? I didn't catch
8 your words.

9 MR. CLAGETT: I was suggesting we present
10 this in the form of a motion in that anyone who might
11 want to oppose it on the ground stated by Dr. Burdette
12 or any other ground, would have a chance to do so on his
13 vote.

14 THE CHAIRMAN: What is your motion?

15 MR. CLAGETT: That the recommendation of the
16 Committee that there be no such prohibition as presently
17 contained in the Constitution be approved, be adopted.

18 MR. GENTRY: I second it.

19 THE CHAIRMAN: Any further discussion? Ready
20 for the question? All those in favor, signify by saying
21 Aye. Contrary, No.

1 DR. BURDETTE: No.

2 THE CHAIRMAN: Dr. Burdette, do you want to
3 be recorded as No?

4 DR. BURDETTE: Yes.

5 THE CHAIRMAN: Anyone else want to have their
6 vote recorded by name?

7 JUDGE WALSH: I want to have mine recorded
8 as being opposed. I don't know what the motion was. I
9 am voting against the authority to give the Legislature
10 the authority.

11 THE CHAIRMAN: Then your vote will be against
12 the authority. Any further discussion? Move on to the
13 next one.

14 MR. CASE: The next two things are really --
15 I think can be handled quite shortly or quite briefly.
16 On Page 29 you will find a rather long provision of the
17 Constitution, which deals with the site of the property
18 and where it can be taxed, and I think it is tremendously
19 interesting and for those of you who have not had an
20 opportunity to read the material at the bottom of Page 29,
21 Page 30 and the top of 31, and while these words were

1 uttered one hundred years ago, I think they conceivably
2 could have been said yesterday. Mr. Sachs wants me
3 to read these, and I would like to, but I know time is
4 getting ahead of us here. They are great words.

5 Actually, Ladies and Gentlemen, the question of sites
6 in tax matters is a legislative rather than a constitu-
7 tional problem. In Article 18, I think it is Section 8
8 or 9, now controls the status of where property shall
9 be taxed and there have been changes in these concepts
10 through the years. The protection that people have in
11 this regard is, of course, a fundamental protection of
12 due process and equal protection of the laws which are
13 carried in other broader language than dealing specifical-
14 ly with tax or tax matters. We therefore recommend that
15 the material on Page 29 be eliminated.

16 THE CHAIRMAN: Any questions? Any comment?
17 If not, we will move on to the next, which I think is the
18 final recommendation.

19 MR. CASE: The final recommendation is that
20 the State shall pass no law providing for payment by this
21 State for slaves, et cetera, and I think that needs no

1 more comment than the Committee has given it there,
2 six words.

3 THE CHAIRMAN: Any questions? Any comment?
4 If not, that concludes the consideration of the Report
5 of the Committee on Finance.

6 The next Report is that of the Sixth Report
7 of the Committee on the Judiciary Department, given to
8 you this morning.

9 May I have your attention for just a moment,
10 please? As you will recall, at the last meeting, the
11 motion was made that the Section 3 of the draft proposed by
12 the Committee on Miscellaneous Provisions be referred
13 back to the Committee for reconsideration with the request
14 that the Committee submit at the next meeting of the
15 Commission a redraft of Section 3 which provides for the
16 University of Maryland something less than the complete
17 autonomy provided by the present Section 3 and that this
18 be made the special order of business at the next meeting
19 of the Commission. That matter will be the special order
20 of business as soon as we reconvene following lunch.

21 You have had handed to you or are now having

1 handed to you two things -- one is a memo called
2 Special Report by the Committee on Miscellaneous Provis-
3 ions. The other is a draft prepared by me yesterday of
4 a proposed Section. Would you please take both of those
5 with you at lunchtime and look them over with these
6 thoughts in mind. The Committee on Miscellaneous Pro-
7 visions does not recommend any one of the provisions that
8 are in the memo that is their Special Report. I have
9 no idea what their feelings would be as to the draft I
10 prepared because they haven't seen it until just now.
11 As soon as we resume after lunch for a reconsideration
12 of this matter, I will recognize Mrs. Bothe to present
13 the Special Report briefly and discuss with the Commission
14 the problems and the difficulties the Committee has had
15 in preparing these drafts and the reasons why the Com-
16 mittee does not recommend any one of them.

17 The Committee then desires to move for a re-
18 consideration of the vote by which Section 3 was deleted
19 previously. Under our practice, since this is a motion
20 by the Committee, it will be put to a vote without debate and
21 depending upon the action taken on that vote, we will

1 then proceed. Now, I want to make it clear that this
2 does not mean that there will not be any discussion and
3 debate. You can have that freely, but I will recognize
4 Mrs. Bothe as Chairman of the Committee to move for a
5 reconsideration of the previous vote before recognizing
6 anyone else to make any other motions.

7 Now, unless there is some objection, that is
8 the procedure we will follow after lunch.

9 MR. CASE: In other words, so that I under-
10 stand it, Mrs. Bothe will make the motion, and it will
11 be seconded?

12 THE CHAIRMAN: Doesn't have to be since it is
13 a Committee motion under our Special Rules.

14 MR. CASE: And then we will take a vote on
15 that which will be, in effect, to, whether or not the
16 vote of last time should be reconsidered?

17 THE CHAIRMAN: Yes, and if it is to be recon-
18 sidered, then the motion that we go back to the original
19 motion, we will have discussion, debate and so forth.
20 Just to repeat, so there will be no misunderstanding;
21 first, take with you at lunchtime the two memoranda.

1 MR. BROOKS: There are three altogether.

2 THE CHAIRMAN: Keep in mind that the one that
3 is the Special Report of the Committee is not something
4 that the Committee recommends. We are merely complying
5 with the request of the Commission that they attempt to
6 draft something. The Committee has not seen the draft
7 until now, the draft I wrote out yesterday. When we
8 return, I will allow Mrs. Bothe to present the drafts for
9 your consideration and have as much discussion of those
10 as you please, but no motions to adopt. I will then
11 recognize Mrs. Bothe to move to reconsider the vote by
12 which Section 3 was deleted at the last meeting of the
13 Commission. That motion will be submitted without de-
14 bate. If it fails, then we move on to a consideration of
15 the alternate. If it passes, then the motion to delete
16 Section 3 is before the Commission, subject to further
17 discussion, debate and vote.

18 MRS. BOTHE: Are there any copies^{of}/our Fifth
19 Report available, Mr. Brooks?

20 THE CHAIRMAN: I had one. I have my copy.

21 MRS. BOTHE: The Commission Members might have

1 some copies here because that deals with the subject
2 matter of the motion to reconsider.

3 MR. BROOKS: We asked everybody to bring
4 theirs with them. Those that don't will have to share
5 with those that do have them.

6 THE CHAIRMAN: Let's adjourn for lunch, and we
7 will come back as soon as we can accomplish that.

8 (Whereupon the meeting adjourned at 1 p.m.
9 for lunch, to reconvene at 2 p.m. of the same day.

10 -----

1
2 CONSTITUTIONAL CONVENTION COMMISSION
3
4
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6
7 AFTERNOON SESSION
8 October 24, 1966 - 2 p.m.
9 Brown Estate, Port Deposit, Maryland
10
11
12
13

14 Appearances as heretofore noted.
15
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17
18
19

20 Reported by:
21 N. F. Swetland

1 THE CHAIRMAN: May we resume the session now?
2 In accordance with the announcement before lunch, we will
3 now take up as a special order of business the further
4 Report of the Committee on Miscellaneous Provisions.

5 Mrs. Bothe?

6 MRS. BOTHE: As the Chairman stated before the
7 lunch recess, the Committee on Miscellaneous Provisions
8 has unanimously determined to ask that this group recon-
9 sider the motion rejected by an 11 to 10 vote at the last
10 meeting of the Commission. I believe that the attendance
11 at today's Commission meeting is larger than it was at that
12 time, and in view of the very close vote, it was the
13 Committee's feeling that the matter should be reconsidered
14 by the Commission.

15 We have followed the Commission's directive
16 and proposed some possible language as has also Mr. Eney.
17 Those of you who took the time during the lunch recess to
18 look at these provisions I think can see why we have
19 brought our original one back for your consideration.
20 The proposal which was contained in our Section 3, I will
21 read it to you, because I know that some Members of the

1 Commission don't have it with them. It was as follows:

2 The University of Maryland shall be managed
3 by the Regents of the University of Maryland in accordance
4 with law and the Regents shall have exclusive general
5 supervision of the institution, and the control and
6 direction of all expenditures from the institution's
7 funds.

8 This Section would have given the constitution-
9 al security to the University of Maryland which it now
10 enjoys by statute. In view of the long debate, and I
11 don't even know if I would be proper on our motion to re-
12 consider to emphasize anything further than the very
13 close vote that was taken before, I would ask everyone
14 here whichever way they voted before and whichever way
15 they attempt to vote again, to at least let the matter
16 be reconsidered at this time, and I so move, Mr. Chairman.

17 THE CHAIRMAN: Before we have the motion, let's
18 have these provisions that anybody may want, questions
19 about the motion.

20 MRS. BOTHE: Mr. Chairman, it is your preroga-
21 tive to make the determination. I think the motion should

1 be decided without debate.

2 THE CHAIRMAN: The motion will be decided
3 without debate, but because of that, do we have any
4 questions as to these provisions?

5 Mr. Scanlan?

6 MR. SCANLAN: Although I didn't find the
7 Committee's reasons when they came in, in support of the
8 proposed Section 3, I still would like to see, to hear
9 their reasons why they reject the three suggestions con-
10 tained in this Special Report. I might find their
11 negative reasons more compelling than their affirmative
12 reasons.

13 MRS. BOTHE: Of course, Mr. Eney's suggestion
14 did not come to us until today, and it is to be noted
15 our directive at the last meeting was, as I understood it,
16 merely to make proposals which granted some lesser degree
17 of autonomy to the University, and there was nothing
18 said at that time with regard to other institutions of
19 higher learning as Mr. Eney includes in his proposal.
20 So the Committee has no comment to make one way or the
21 other in that respect. However, as regards the propositions

1 which we presented you with, our feeling was that the,
2 that a mere exhortation or direction to the Legislature
3 to let the University alone was of no consequence, and
4 really did not aspire to constitutional significance.
5 We had understood that the Commission generally was op-
6 posed to fancy language, fancy empty language in the
7 Constitution, and while we had no objection to naming
8 the University annex, claiming that we desire that it
9 have as much freedom as possible, we did not feel that
10 this was of constitutional significance. It took away
11 completely, it pulled the teeth of what we were trying
12 to do, which was to grant constitutional security to the
13 degree of autonomy that the University has enjoyed under
14 statute. There was no other or better way to draft that
15 language than as we did it. I would point out that the
16 third suggestion, the one appearing on Page 2 of our
17 proposals is one which has been copied from the Hawaiian
18 and Alaskan Constitutions which are not among those
19 filed as granting autonomy to their State University.
20 We don't really know what it means, and I don't believe
21 we were able to discover exactly how far that language
~~was intended to go by the Constitution makers in those~~

1 States. We stuck it in for that reason. It could per-
2 haps be read to be equivalent to our proposed Section 3,
3 but it has never been so construed.

4 The other two merely exhort the Legislature to
5 do what they have done in the case of the University,
6 but do not mandate it. Therefore, we see no purpose
7 served by including them, and of course, it is exactly
8 the opposite to our intended purpose in the language of
9 the suggested Section 3 which was, of course, debated
10 at some length at the last meeting. I think everyone on
11 the Commission understands the difference between con-
12 stitutional degree of autonomy.

13 THE CHAIRMAN: Any further questions? Any
14 further discussion of the Special Report? If not, I
15 will recognize Mrs. Bothe to move a reconsideration of
16 the vote by which Section 3 was deleted.

17 MRS. BOTHE: I so move on behalf of the Mis-
18 cellaneous Provisions Committee.

19 THE CHAIRMAN: The motion does not require a
20 second and will be submitted without debate. Ready for
21 the question? All those in favor of the motion to re-

1 consider, signify by saying Aye. Contrary, No. The
2 Chair is in doubt. All those in favor, signify by
3 raising hands. Contrary. The motion is carried 17 to 4.
4 The question now arises again on the motion of Mr. Scan-
5 lan to delete Section 3. Section 3 is the Section on
6 Page 3 of the Fifth Report of the Committee. I am not
7 sure everyone has it, so I will read it:

8 The University of Maryland, in accordance
9 with law, and the Regents shall have exclusive general
10 supervision of the institution, and the control and
11 direction of all expenditures from the institution's
12 funds.

13 Mr. Scanlan, you have the privilege of the
14 floor. It is your motion.

15 MR. SCANLAN: I hate to repeat the arguments I
16 stated in support of the motion at the last meeting. I
17 think most of them are remembered by those who participated
18 in debate. Briefly, I am opposed to raising the Univer-
19 sity of Maryland to, in effect, an autonomous department
20 of the Government of this State. Napoleon once said the
21 republican structure is the first object of government.
~~But I am sure he would not say the republican structure~~

1 should be made an arm of government in the sense that
2 those who are called upon to manage a great public uni-
3 versity would have a status imperious to legislative
4 supervision. I regard this provision as evidencing a
5 distrust of the representatives of the people. I think
6 it unnecessary. I think it is insulting. I think it is
7 monopolistic. I think any need for its conclusion has not
8 been demonstrated. The University has flourished, in the
9 words of Mrs. Bothe. It is a great university and will
10 remain a great university, and the grant of constitutional
11 autonomy will neither make nor mar the great and develop-
12 ing institution. These arguments you have heard from
13 me before. I have seen, read, or heard nothing in the
14 interval to change my mind. There has been no real
15 demonstration for such a provision. It has no place in
16 the Constitution, and if it is to be put in this motion,
17 if my motion is defeated on the second go-around, I cer-
18 tainly should include all the other public institutions
19 of this State of higher learning if this provision continues,
20 and I sincerely hope it doesn't.

21 THE CHAIRMAN: Any further discussion? Let me

1 say to all of you, I don't think it is necessary to re-
2 mind you that we are following in this debate the tim limi-
3 tations, three minutes for every speaker. Any further
4 discussion? Any further debate?

5 GOVERNOR LANE: The difficulty that I have
6 and have expressed of the consideration when it first
7 came up was that I object to either the use of the word,
8 autonomy, or the implication of it, if the language is
9 intended to reach that far. I took the true Webster
10 definition of autonomy. He says it is a quality or
11 state of being autonomous. So I had to look up, that
12 reminds me of shaking hands to yourself coming back.
13 I looked up autonomous, and he says, Of and pertaining
14 to an autonomy. That is shaking hands twice. It is
15 independent of government without outside control. That
16 was my purpose in voting before, and I still maintain
17 the same position. Could I ask a question?

18 THE CHAIRMAN: Yes, sir.

19 GOVERNOR LANE: Will the solution of this
20 very difficult problem in which there are various and
21 definite feelings, would it be possible to consider all

1 of these suggestions that would eliminate the implication
2 of complete autonomy?

3 THE CHAIRMAN: I am not sure that we can con-
4 sider all of them, but if this motion is defeated, then
5 any motions to amend Section 3 will, of course, be pre-
6 sented by anybody who desires to do so. If the motion
7 is passed, then I suppose one could offer any one or
8 more of these as substitutes. It would not be amend-
9 ments because Section 3 would not be there, but I would
10 assume one way or the other, the substance of some of
11 these proposals at least could be put before the Commis-
12 sion.

13 Mrs. Bothe?

14 MRS. BOTHE: I wasn't going to make any com-
15 ment, and this won't be long, but since Mr. Scanlan
16 has spoken and our Honorable Chairman also, I thought
17 there were perhaps a few things that should be said. The
18 first, of course, which was debated at the last meeting
19 were the implications of Section 3, and the word, autonomy,
20 is not used literally in that Section; one, because its
21 meaning is ambiguous and two, because there was no

1 intention that the University would be free from any
2 control by the Legislature or the General Assembly. On
3 the contrary, the power of the purse strings which is
4 the untimate power would be made, and at our last Com-
5 mission meeting there was a lot of discussion how this
6 would occur. I am sure everyone here is satisfied that
7 the ultimate control of the University in terms of
8 where the funds were to come from and how much they were
9 to be insofar as the taxpayers would be supporting the
10 University, would be and would remain forever inviolate
11 in the hands of the General Assembly. So there is no
12 absolute or even relative autonomy determined here,
13 but merely that the experts, the people who know best and
14 who are best able to handle our State University inde-
15 pendently should have the right to do so in the Consti-
16 tution without interference, not by the Legislature,
17 really, but by the Executive Department, the Budget
18 Bureau mainly, that this should not be taken away by the
19 Legislature. That is what the essence of the suggestion
20 is, and that is all it is.

21 THE CHAIRMAN: Any further discussion? Before

1 Mr. Scanlan closes debate, I would like to state very
2 briefly my own reasons for opposing the motion for
3 constitutional autonomy for the University of Maryland
4 without repeating the reasons given at the last meeting.
5 I have tried, as I indicated, to draft what I thought
6 could be acceptable to those sharing my views as^a/division,
7 providing in the Constitution for some recognition in
8 the Constitution for the University of Maryland, and what
9 I have done is highlight the distinction of what I
10 thought should be in the Constitution and that of the
11 opponents of the Section 3. It seems to me that the
12 University ought to have as broad autonomy as possible
13 in all academic matters. It should have general super-
14 vision of the institution. I don't think in this respect
15 it differs one bit from that of any other institution
16 of higher education. I think the same principle is
17 applicable. At the same time, I feel that the Legislature
18 ought to have the ultimate control in determining how
19 far the governing boards of the University and the other
20 institutions may go in controlling expenditures, in
21 setting tuition fees and in determining all the other

1 matters which must be determined in the operation of the
2 University. I think that the Legislature should, it
3 could and should delegate large measure of control over
4 these matters to the governing boards, and for that
5 reason in the draft which I have prepared, I provided a
6 constitutional encouragement for this by saying that
7 the Legislature should do so.

8 However, it is my belief that the, that
9 neither the University of Maryland or any other public
10 agency should have complete freedom from the General
11 Assembly, and I am therefore opposed to this provision.

12 Any further discussion? Mr. Scanlan, do you
13 want to close?

14 MR. SCANLAN: Merely say that when Mrs. Bothe
15 said the experts know best that it should be left alone,
16 she therein put her finger on the real basis of my
17 opposition to this proposal for constitutional autonomy.
18 They should not be immunized from the representatives of
19 the people. The only recent instance in my memory of
20 what has been an attempt to trample on academic freedom
21 at the University was the recent fuss when one of the

1 Civil Rights speakers spoke at the campus, and a resolu-
2 tion was introduced and not passed. Generally, the
3 additional Members of the Legislature will come from
4 the suburban areas of the State, which traditionally have
5 been very solicitous and very considerate and understand-
6 ing of the needs of the University of Maryland and the
7 other institutions of higher learning in this State. I
8 think there is even less reason to fear undue legislative
9 interference with the operations of the University of
10 Maryland than there may have been in the past, and in the
11 past, as Mrs. Bothe has put it, the University has
12 flourished.

13 THE CHAIRMAN: Are you ready for the question?
14 The question arises on the motion to delete Section 3
15 from the recommendations of the Committee on Miscellaneous
16 Provisions. A vote Aye is in favor of deleting the
17 provision. A vote No is a vote in favor of retaining
18 the provision. All those in favor, please signify by
19 a show of hands. Contrary? The motion fails, 11 to 13.

20 Dr. Bard?

21 DR. BARD: Mr. Chairman, is it in order to

1 submit an amendment or a substitution, whichever word is
2 in order, an additional amendment?

3 THE CHAIRMAN: It is.

4 DR. BARD: I move that in addition to that
5 portion of the Section which has just be voted upon to be
6 retained, we add the following, and the State colleges
7 and other public institutions of higher education shall
8 formulate policies for their respective institutions
9 and shall by law be granted such additional powers of
10 supervision, direction and control of their respective
11 institutions and the expenditure of the funds thereof as
12 may be feasible and consistent with their status as
13 public agencies.

14 MRS. BOTHE: I second that, Mr. Chairman.

15 THE CHAIRMAN: Any discussion?

16 Dr. Bard?

17 DR. BARD: It is highly important for us to
18 recognize that every last point in connection with the
19 significance of the University of Maryland having the
20 power in regard to financial expenditures, the power in
21 regard to academic degree, the power in regard to flexi-

1 bility holds true for other institutions. As one who
2 has been associated recently with one of the State col-
3 leges, the Bowie State College, I can tell you with firm-
4 ness that some of the serious problems faced at this
5 particular institution, and I know this from direct
6 experience, have as their foundation stones the fact that
7 the State College at Bowie, and this would hold true
8 for other State colleges, does not have the flexibility
9 to move beyond the salary schedule that has been set
10 by, let us say, the Board of Public Works. By way of
11 example, there are not more than one secretary at the
12 entire State College of Bowie who can take shorthand,
13 and the reason this is so is because we cannot recategorize
14 our secretaries so that there is a possibility of bring-
15 ing them there under that situation. I could go on
16 in connection with other positions. I am merely stating
17 here that every last illustration which was stated last
18 time hold true in this category. Now, because the point
19 which Dr. York makes in regard to feasibility and incon-
20 sistent with their status has been given credence by some,
21 I have added the words, thereof as may be feasible and

1 consistent with their status.

2 I therefore feel very strongly that the position
3 which we have just taken makes it even more imperative
4 than ever that we free the State colleges and other
5 public institutions of higher education to the same degree.

6 THE CHAIRMAN: Dr. Jenkins?

7 DR. JENKINS: Mr. Chairman, I wish to empha-
8 size and support the statement just made by Dr. Bard that
9 all of the reasons for providing this freedom for the
10 University of Maryland apply also to the other institu-
11 tions of higher education. I may say as sort of a ex
12 post facto statement that my vote for the original
13 statement was not with regard to the University of Mary-
14 land based on the assumption that the General Assembly
15 group controls the purse strings and will ultimately have
16 control of higher education in the State.

17 THE CHAIRMAN: Any further discussion?

18 Mrs. Bothe?

19 MRS. BOTHE: Referring to the Report of
20 Miscellaneous Provisions Committee on education, I would
21 like to point out that the objections expressed in that

1 Report to recognition of other institutions other than the
2 University of Maryland would not apply to the proposal
3 before the Commission now. Our reasons as expressed
4 there involve the state of development of the other
5 higher educational institutions that could not very well
6 be stratified in the Constitution in this present form.
7 However, the exhortatory language which Dr. Bard proposes
8 or rather the directive to the Legislature is one which
9 I, and I believe also the Committee, feel would leave
10 the latitude for development of the other institutions
11 of higher learning which we think is desirable, we feel
12 that in the long term they should be granted as much,
13 I hate to use the word, autonomy, but they should be
14 granted as much independence as his consistent with their
15 ability to operate independently.

16 MR. BOND: I wonder if we could have the
17 language as proposed by Dr. Bard read again?

18 THE CHAIRMAN: The language is to add to Sec-
19 tion 3 the following: In the State colleges and other
20 public institutions of higher education shall formulate
21 policies for their respective institutions and shall,
~~by law, be granted such additional powers of supervision,~~

1 direction and control of their respective institutions
2 and the expenditures of the funds as may be feasible and
3 consistent with their status as public agencies.

4 Any further debate?

5 Mr. Martineau?

6 MR. MARTINEAU: I would like to ask a question.
7 Dr. Bard, where does that fit into the present Section 3
8 of the existing document?

9 THE CHAIRMAN: It is an addition to it.

10 DR. BARD: It is an addition to it, at the end.
11 No, it is an addition in Section 3 and in answer to that
12 question, I would like to make it clear if I may that
13 this is procedure that is used in most of the State
14 Constitutions that take a position in respect to higher
15 educational institutions. They mention the State Univer-
16 sity and then go on to mention other segments of higher
17 education.

18 MR. MARTINEAU: Where are you putting that?

19 THE CHAIRMAN: At the end of the Section.

20 DR. BARD: At the end of the Section.

21 MR. MARTINEAU: Then you are actually drawing

1 a distinction between the University and the State
2 colleges, and the other institutions?

3 DR. BARD: We are drawing a distinction at
4 this time, this is correct, but I think it is a fine
5 distinction in that --

6 MR. MARTINEAU: Excellent or narrow?

7 DR. BARD: Pardon?

8 MR. MARTINEAU: Excellent or narrow?

9 DR. BARD: Narrow distinction.

10 MR. GENTRY: Speaking against the motion, I
11 would like to say that while I voted in favor of it,
12 of keeping the original Section relating to the Univer-
13 sity of Maryland, I don't think it can be said to be
14 belittling of any of our other institutions to say at
15 the moment they do not rank in the same status as the
16 University of Maryland. The University of Maryland has
17 attained this level through a progression through a
18 period of testing under the Sections called the Autonomy
19 Act in Article 77. They have had the statutory period
20 of testing for some years now, and it was certainly felt
21 by me that while they merited this consideration in the

1 Constitution, the same cannot be said of the other
2 institutions which have, and particularly the Board of
3 State Colleges, has only an existence of a few years,
4 very few years, and has had no experience with management
5 of its own funds, per se. I would urge that you vote
6 against the motion.

7 THE CHAIRMAN: Mr. Sayre?

8 MR. SAYRE: I have two questions; the first
9 one is in interpreting higher education, does that include
10 colleges?

11 DR. BARD: I think we ought to add the word,
12 State public institutions. I think that is a good con-
13 cept.

14 MR. SAYRE: Then it would not include --

15 DR. BARD: Would not include the junior col-
16 leges.

17 MR. SAYRE: So the junior colleges could move
18 into a State position if the Legislature made it.

19 DR. BARD: That is possible. The junior col-
20 leges are local institutions. The question is an impor-
21 tant one, far more important than it may seem. As

1 President of the Baltimore Junior College, I have a good
2 deal more autonomy than I do as executive consultant
3 at Bowie State College. It is possible for us within the
4 frame of reference of our local units to, if we have a
5 necessity for filling a position, if money is available,
6 we can do this under the autonomy that is given to us
7 under the City Charter, for example. But there is no
8 such possibility under the present structure that is
9 in existence as far as the State colleges are concerned.

10 I personally find no need, and I think I would
11 say the same for other junior college presidents, to
12 extend this to include local higher educational institu-
13 tions.

14 THE CHAIRMAN: Do I understand you want to
15 change your motion to strike the word, public, and make
16 it State?

17 DR. BARD: No, I would put, State, before
18 public; and all other State.

19 THE CHAIRMAN: Use both words?

20 DR. BARD: I thought that might take care of
21 his objection to, local public.

1 THE CHAIRMAN: I understand. But you would
2 want both words?

3 DR. BARD: Well, it might otherwise mean State
4 private institutions, and you don't need that really.
5 I guess, Mr. Chairman, I think you have convinced me
6 that you really don't need both. State will do.

7 THE CHAIRMAN: Mrs. Bothe?

8 MRS. BOTHE: That is agreeable with me.

9 MR. SAYRE: My other question simply relates
10 to the meaning of this additional provision. As I
11 interpret the meaning, it is merely putting into the
12 Constitution a guideline that is non-enforcing, actually,
13 isn't it? I mean, this is what the Legislature already
14 can and would so, isn't that right, to the statute, and
15 I just don't see where --

16 DR. BARD: I would like to get back to the
17 point the Chairman made. Placing this in the Constitu-
18 tion sets forth a direction. As you will recognize,
19 this comes from Mr. Eney's structure. It sets forth a
20 direction and not just a perfunctory guideline. It
21 makes it clear that this is where we stand in regard to

1 higher education and makes it lots easier for those of
2 us associated with State institutions to move within
3 that frame of reference. I would see it, for example,
4 as providing those of us who operate at Bowie and like
5 Dr. Jenkins at Morgan, to have the kind of flexibility
6 which will permit the State colleges to move ahead more
7 rapidly. One of the very reasons I am at Bowie State
8 College is as so many of you know, is because of the
9 restrictions that have been so very severe that this
10 college has not been able to move ahead and has some serious
11 difficulties.

12 MR. SAYRE: You think this would open it up?

13 DR. BARD: I think this would open it wide open,
14 and I have strong feelings about this from experience.
15 These are not mere perfunctory words.

16 THE CHAIRMAN: Mr. Sykes?

17 MR. SYKES: Mr. Chairman, no one knows more
18 about the State education system than I do. Enlighten
19 me as to whether or not the addition of this language
20 that Dr. Bard recommends would provide for two semi-
21 autonomous administrative bodies which might be like two

1 heads on a Siamese twin or Siamese twins that would
2 pull the body in different directions, with no place in
3 the State to coordinate the policies insofar as they
4 conflict.

5 MR. CASE: Can I answer that?

6 THE CHAIRMAN: Mr. Case?

7 MR. CASE: I would like to make a statement
8 in favor of this motion and in so doing, I will answer
9 Mr. Sykes' question.

10 Since the advent of the Curlett Commission's
11 Report three years ago, higher education in this State
12 has for the first time taken on a unified direction.
13 Under that Report as ultimately adopted and then as sup-
14 plemented by legislative amendment, there is a council,
15 an advisory council on higher education which theoretically
16 sits at the apex of the triangle dealing with these
17 subjects in our State. The University of Maryland is
18 one of the three parts of higher education. The State
19 colleges are a second part, and the junior colleges are
20 the third part.

21 Now, it is perfectly true that the advisory

1 council has only advisory powers. But we at the Univer-
2 sity respect this advisory council, and I might say that
3 when major undertakings are afoot such as the institution
4 of a new college which was done when the College of
5 Architecture was installed in the curriculum last year
6 that before this was done, the whole matter was submitted
7 to the advisory council for their judgment and determina-
8 tion. So I don't think it accentuates a two-headed
9 monster in any sense of the word. Now, as to my feeling
10 perhaps as a Member of this Commission, and maybe more
11 perhaps as a Member of the University's Board, there is
12 just no question about the fact that if we are to have
13 a fine system of higher education in this State, the
14 University cannot do it all.

15 Those people who thought the University was
16 then end-all, be-all of higher education in the State
17 have come to realize that this cannot and should not
18 be the case, because the job is just too big. There are
19 too many people to be taken into one institution, and in
20 my own judgment, the University today is at its optimum
21 size. I would hate to see it get much bigger with upwards

1 of 30,000 students at the College Park campus, University
2 of Maryland Baltimore campus expected to go to 5,000
3 within a relatively near future term, and with the pro=
4 fessional schools in Baltimore adding several thousand
5 more to that, you can see what the University is going
6 to be.

7 Now, it is therefore not only desirable, but
8 almost acutely necessary that the State colleges be given
9 every chance to grow and strengthen. This is good for
10 the University of Maryland, and it is good for the
11 State in the largest sphere. I feel, therefore, that this
12 amendment which Dr. Bard has suggested deserves the
13 worthy consideration of the Commission because I feel
14 that it will, it does take a good long step down the
15 road of strengthening the State colleges which, as I
16 see it in the future will probably be the colleges closer
17 to the people than any other institution of higher learn-
18 ing. Therefore, I hope that the Commission will sustain
19 this motion.

20 THE CHAIRMAN: Mr. Miller?

21 MR. MILLER: Parliamentary query, Mr. Chairman.

1 If this motion is voted up or down, are other amendments
2 open to consideration?

3 THE CHAIRMAN: Yes, sir.

4 MR. MILLER: What will be the program?

5 THE CHAIRMAN: Be open to further amendment.

6 Mr. Della?

7 MR. DELLA: Mr. Chairman, in the discussion
8 of the colleges, what position does this leave the com-
9 munity colleges? Are they still on the outside?

10 THE CHAIRMAN: As Dr. Bard explained, they
11 are not State institutions. They are institutions of
12 the local subdivision of Baltimore City, and so forth.
13 They would not be covered by this proposal.

14 Any further debate? Any further discussion?

15 I would like to state my own position on this
16 amendment, because as is obvious, a greater part of it is
17 the language taken from the amendment which I had sug-
18 gested for the consideration of the Commission before
19 lunch. I am going to vote for the motion, but I do so
20 with a great deal of reluctance because I share the con-
21 cern expressed by Mr. Martineau, and, on one part, and

1 Mr. Sykes on the other. I think this does very substan-
2 tially increase the possibility that the construction
3 given the Commission of Section 3 as proposed by the
4 Committee plus this Section will greatly increase the
5 measure of autonomy to be afforded to the University
6 of Maryland, and thereby, by the same token, decrease
7 the measure of autonomy to the State colleges. I think
8 that this inevitably in a sense is a downgrading of the
9 institution.

10 I also share Mr. Sykes' concern that this
11 creates a two-headed creature that may or may not be made
12 to work by the advisory board.

13 The Legislature, I would think, would have
14 considerable difficulty if it should ever determine that
15 it wanted to have one Board of Regents or Trustees exer-
16 cising control over all State institutions of higher
17 education. However, the alternate of not recognizing
18 the institutions of higher education at all and leaving
19 in the provision recognizing the University of Maryland
20 seems to me to give even greater impetus to the notion
21 that the State colleges are thereby downgraded and give

1 even greater impetus to the idea that they should not
2 have even a measure of control over the institution.
3 Therefore, although I am reluctant and concerned very
4 much about the effect of the double provision, I will
5 vote for the motion.

6 Any further discussion? Dr. Bard, will you
7 close the debate?

8 DR. BARD: I have but this statement to make,
9 Mr. Chairman. First, I agree very strongly with your
10 last statement, namely, to leave out the State colleges
11 from this Constitution, no matter how you may feel in
12 regard to the first motion which we have just passed, it
13 would do serious damage to the growth of the State colleges
14 at this time particularly. Most State Constitutions
15 that deal with higher education include both elements,
16 the University and the State colleges. To leave them out
17 would be very wrong.

18 Secondly, it is important for us to recognize
19 that the tripartite system of higher education is begin-
20 ning to be deeply recognized in the State of Maryland as
21 in
it has/so many States throughout the country, and this is

1 not a whim of the moment. It is something that has come
2 into being as a result of careful study by educators,
3 research and recognition, and therefore, to take but one
4 segment of the tripartite and recognize it would be to
5 destroy the whole tripartite arrangement with which the
6 State colleges are part.

7 Thirdly, the State colleges will have over
8 40,000 enrollment in 1980. Extrapolations have been
9 done. This is a strong segment of higher education. We
10 must think in terms of a totally new position which
11 they occupy; one with which I am associated at Bowie
12 will have 8000 students by 1980. Dr. Jenkins' institu-
13 tion will have somewhere around 8000 about the same time.
14 I think that is about correct. So we are dealing with
15 numbers that approximate that of the University of
16 Maryland by 1980 and therefore, I would urge you to
17 support this motion, because it seems to me that it is
18 critical, particularly now that we recognize the Univer-
19 sity to the very encouragement of those who work with
20 these institutions and to their progress.

21 THE CHAIRMAN: Ready for the question? The

1 question arises on the motion to amend Section 3 by
2 adding at the end thereof the following language:

3 And the State colleges and other institutions
4 of higher education shall formulate policies for their
5 respective institutions and shall by law be granted ad-
6 ditional powers of supervision, direction and control of
7 their respective institutions, and the expenditure of
8 the funds thereof that may be feasible with their status
9 as public agencies.

10 All in favor, please signify by a show of
11 hands. Contrary? The motion is carried, 20 to 4.

12 Mr. Scanlan?

13 MR. SCANLAN: I would like to make a motion,
14 Mr. Chairman, substituting for Section 3 of the Bard
15 motion in the following which I can identify basically
16 as Mr. Eney's motion, with one change of language, read-
17 ing from Mr. Eney's memo, I move that the following be
18 substituted for Section 3 as amended:

19 The governing boards provided by law for
20 State institutions of higher learning shall formulate
21 policies for the respective institutions and shall have

1 general supervision thereof in all academic matters.
2 They shall by law be granted such additional powers of
3 supervision, direction and control of their respective
4 institutions and the expenditure of the funds thereof
5 as may be feasible and consistent with their status as
6 public agencies and as may be deemed appropriate by the
7 General Assembly.

8 THE CHAIRMAN: Is there a second?

9 MR. HOFF: Second the motion.

10 MRS. BOTHE: Mr. Chairman, point of order. As
11 I understand it, Mr. Scanlan is asking for a reconsider-
12 ation of the previous action taken.

13 MR. SCANLAN: Mr. Chairman?

14 MR. CASE: I quite agree with this.

15 THE CHAIRMAN: Just^a/second, please. I am
16 not certain.

17 MR. MILLER: If the Chair please, that is
18 the very question I asked you before we voted on it.
19 There was no appeal from the ruling, and I think it would
20 be extremely awkward if we were now legislated out of
21 Court.

1 THE CHAIRMAN: That is exactly why I expressed
2 concern, because Mr. Miller had asked if the Section was
3 open to further amendment, and I said it was. This
4 motion goes to the complete substitution of a different
5 provision for the motion, for the provisions that have
6 been adopted. I very frankly am uncertain and --

7 MR. MILLER: I might say, Mr. Chairman, I am
8 uncertain, too, as to the parliamentary. But it seems
9 to me when the Chair has given me a ruling that was
10 with this very thing in mind I asked if it would be open
11 to change and was told Yes, and there was not a voice raised
12 in opposition. It would seem to me that irrespective of
13 what might be the irregular rule on this, that it would
14 at least be operating as a distinct reversal as far as
15 what the Chair told me.

16 THE CHAIRMAN: Mr. Case?

17 MR. CASE: Mr. Chairman, I think the time has
18 come as far as this University of Maryland thing is
19 concerned, to stop playing games. Thirteen people on
20 this Commission have voted for the limited degree of
21 autonomy for the University as suggested in Number 3 of

1 the Committee's recommendation. Now, the effect of the
2 Scanlan motion would be to completely reverse that,
3 completely reverse it, and to put the University of
4 Maryland right back where it was before we voted. Now,
5 one of the people who voted for the autonomy of the Uni-
6 versity had to leave his note here, but has --

7 THE CHAIRMAN: Has anybody left?

8 MR. CASE: Mr. Smith has left, and I think
9 this is a monstrous thing. We are all grownup people
10 here, and the majority of the Commission has voted for
11 it.

12 MR. MILLER: As a matter of personal privilege,
13 I am not playing games, and I asked the Chair for a rul-
14 ing, and I got it. I don't think it ought to be changed
15 just because the ruling satisfied me, but if it hadn't
16 been for that, I would have offered a motion to substi-
17 tute this proposal.

18 THE CHAIRMAN: Mr. Miller, the Chair does not
19 think you are plahing games or have any desire to think
20 so, nor does the Commission think so.

21 MR. SYKES: Mr. Chairman, I would suggest that

1 what has happened was, we passed a motion with respect
2 to a Section that contained only language relating to
3 the University of Maryland. That was amended to include
4 language relating to the State colleges. Now, the Chair
5 ruled that the matter would be open to further amend-
6 ment and the amendment, as I understand, Mr. Scanlan is
7 now authorized to conform the Section or to act upon
8 the Section with an overall view in light of the amend-
9 ment which has already been made. I don't see how, when
10 you make an amendment which is germane to the Section,
11 you can shut off further amendment which is also germane
12 to the Section and which is needed, because a Section
13 which had previously dealt with only one subject now
14 deals with two.

15 THE CHAIRMAN: I am ready to make my ruling,
16 and anybody can appeal the ruling who desires to do so.
17 The question with respect to Section 3 after the recon-
18 sideration arose, not on the motion to approve the
19 Section, but on a motion to delete the Section. The Sec-
20 tion, therefore, remains before the Commission for action
21 merely as a recommendation of the Commission. It was

1 subject to any motion to amend or substitute other
2 language and still remains subject to those motions. If
3 the motion had originally arisen on a question of approv-
4 ing the Section, the ruling may have been different,
5 but it seems to me that the motion is therefore authorized.

6 MRS. BOTHE: I would like to appeal the rul-
7 ing and point out the practice of this Commission has
8 been not to entertain motions in favor of the Committee's
9 recommendation, but to let them go as proposed unless
10 a Member proposes deletion or change. It was under those
11 circumstances that the posture of the motion was before
12 this Commission; and for that reason, the vote was very
13 obviously one to retain the Section. It was so under-
14 stood. The Chairman, before the lunch recess, pointed
15 out that the Commission should regard the suggestion of
16 the Chairman and of the Committee in taking its vote on
17 reconsideration. I am sure that every one of us who
18 were here at the time and those who still remain, under-
19 stood when they voted on that motion that they were
20 voting in favor of retention of Section 3 as proposed
21 by the Committee.

1 THE CHAIRMAN: You ready for the question?
2 The question arises on the motion to appeal the ruling
3 of the Chair.

4 JUDGE ADKINS: Mr. Chairman, may I make a
5 statement?

6 THE CHAIRMAN: After the question.

7 JUDGE ADKINS: After you put the question.

8 THE CHAIRMAN: The question arises on the
9 motion to appeal the ruling of the Chair. A vote No
10 reverses the Chair. A vote Aye sustains the Chair and
11 permits the amendment. A vote No does not sustain the
12 Chair. You ready for the question?

13 JUDGE ADKINS: I would like to make a brief
14 statement if I may. I would simply like to state that
15 I shall not vote on this motion. I would like to say
16 briefly I have two reasons for doing so. First, I did
17 not have any discussion this morning relative to your
18 proposal, and secondly, since I came late and since I am
19 advised that one man has left who was in favor of the
20 motion, it seems to me it would be fairer to all concerned
21 if I considered myself a pair with Mr. Smith. Since I

1 shall consider myself voting against the motion, but I
2 will consider myself as a pair with him and not vote on the
3 motion.

4 THE CHAIRMAN: You ready for the question?

5 The vote Aye sustains the Chair and sustains the motion.

6 A vote Nay rules the motion out of order. All those
7 voting Aye, signify by a show of hands. Contrary?

8 The Chair's ruling is sustained, 14 to 7; the motion
9 therefore is in order. The motion, as I understand it,
10 and you will have to correct me if I don't have it right,
11 Mr. Scanlan, is as follows:

12 The governing boards provided by law for State
13 institutions of higher learning --

14 MR. SCANLAN: Higher education.

15 THE CHAIRMAN: -- shall formulate policies
16 for their respective institutions and shall have general
17 supervision thereof in all academic matters. They shall
18 by law be granted such additional powers of supervision,
19 direction and control of their respective institutions
20 and the expenditure of the funds thereof as may be feasible and consistent with their status as public agencies,
21

1 and as may be deemed appropriate by the General Assembly.

2 The motion is to substitute that language
3 for Section 3 as amended.

4 Mr. Scanlan?

5 MR. SCANLAN: This motion eliminates what the
6 Chair referred to as the dichotomy of treatment between
7 the University of Maryland and the other institutions
8 of higher education that exist by virtue of Professor
9 Bard's amendment to the Committee Report. This Section,
10 as I now propose it, treats all State institutions of
11 higher learning equally, at least from the point of view
12 of the Constitution and the autonomy that the Constitu-
13 tion will provide. It permits the General Assembly to
14 draw distinctions among them in accordance with their
15 development as educational institutions to give some more
16 autonomy than others. Quite obviously, the University
17 of Maryland in relation to the other institutions, has
18 developed to a point where it will undoubtedly continue
19 to enjoy a very, very high degree of autonomy, perhaps
20 almost complete autonomy. Obviously, some of the other
21 State institutions may not be quite ready for that status.

1 However, it is the judgment the representatives
2 of the people will make, and a judgment that only the
3 representatives of the people should make. It should
4 not be a judgment frozen into the Constitution.

5 THE CHAIRMAN: Any further discussion?

6 Mr. Bond?

7 MR. BOND: Just a point of order. I understand
8 the Chair will allow Judge Adkins and Mr. Smith to be
9 paired off against each other.

10 THE CHAIRMAN: I have no such authority.
11 Under the previous Sections of this assembly, I understood
12 Judge Adkins' decision would be that he would not vote,
13 and therefore failure to count his vote and Mr. Smith's
14 would, in effect, be a pair.

15 Mrs. Bothe?

16 MRS. BOTHE: If Mr. Case wants to go ahead
17 of me, it is all right.

18 MR. CASE: Whatever you want.

19 MRS. BOTHE: I wanted to comment on what Mr.
20 Scanlan just said. He has raised a new monster, which
21 I don't think we ever had occasion to consider, and that

1 is that all institutions of higher education should be
2 equal under the Constitution. There is no principle
3 on which, at least I think I am speaking for my Committee
4 here, we did not proceed on the basis that this was a
5 constitutional requirement. All through our considera-
6 tion after having ascertained the facts, we had to
7 recognize that the University of Maryland was a different
8 dish of tea than the rest of the higher educational
9 systems and was bound to remain that way despite the
10 growth and development of the other institutions. While
11 it is part of the tripartite system, each point is some-
12 thing different and requires different treatment. The
13 University is a multi-faceted institution. It carries
14 on a wide breadth of activity which no matter how many
15 students come within the purview of the other higher
16 educational institutions, they will not be the same.
17 The need for the security of constitutional autonomy
18 for the University is now and always will be distinctive,
19 and there is good cause to put the University on a dif-
20 ferent basis than the other State institutions of higher
21 learning and to assure that it cannot be taken away

1 except by constitutional amendment.

2 Mr. Scanlan's basic premise is false, as we
3 found from an investigation of the actual operations
4 of the higher educational institutions. We feel the
5 University is unique. If we didn't, we would not have
6 proposed that it be made an exception to the other, not
7 only the other higher educational institutions, but the
8 other institutions in the State generally. The amend-
9 ment as he puts it would considerably weaken, of course,
10 not only as applied to the other higher educational
11 institutions of the State, but the whole principle that
12 we sought to make in the Constitution would be greatly
13 watered down.

14 THE CHAIRMAN: Mr. Case?

15 MR. CASE: Well, Mr. Chairman, I think enough
16 has been said about this probably, very frankly, and it
17 tends to get somewhat emotional which it shouldn't be
18 in a group of this kind. I agree with Mrs. Bothe. As
19 I understood the vote on the Scanlan motion, number one,
20 it was a vote in favor of the type of physical autonomy
21 that is embraced in that particular provision for the

1 University. I think the thirteen Members of this Com-
2 mission in voting that way, have voted for the University
3 type, the type autonomy for the University as embraced
4 in that particular provision.

5 Now, there have been motions and counter-
6 motions, paring and counter-paring, but it seems to me,
7 Mr. Chairman, that the sensible thing to do is to find
8 out, as I thought we had found out, how many people on
9 this Commission favor autonomy for the University of
10 Maryland, if that word is used in the context we have
11 here. Let's have done with this motion, counter-motion,
12 what I call playing games. No commission I have ever
13 sat on in this State has ever decided a basic problem
14 by parliamentary maneuver, and that is why I said, let's
15 grow up a little bit, and try to find out basically what
16 the Commission wants.

17 If the majority of the Commission is opposed
18 to autonomy for the University of Maryland, then let's
19 register that opposition and go on from there and do our
20 work. If the majority of the people here in this room
21 favor it, let's accept that and likewise go on with the

1 work; but I say that I think this is wrong, and I think
2 the substitution of a motion like Mr. Scanlan has made
3 when one of the Members of the Commission who was in
4 favor of this has gone, and now Mr. Adkins here who was
5 against it before, is just playing games, and I repeat,
6 we ought to go ahead with what we have done and use any
7 other time we have to debate other things.

8 THE CHAIRMAN: Mr. Sykes?

9 MR. SYKES: Mr. Chairman, I don't think the
10 problem is as simple as that. I would like to state my
11 position on Mr. Scanlan's amendment. I am going to vote
12 for it, not merely because of the reasons he stated he
13 had, but because I find that his suggestion is clear; it
14 states very clearly what the direction is that we want
15 public education in this State to go, will be, and it
16 states clearly the respective roles of the governing
17 bodies of the State institutions of higher learning and
18 the Legislature. I point out that Section 3 in its
19 original form as recommended by the Committee does not
20 do any of those things. It is itself a two-headed mons-
21 ter, and each head is in irreconcilable conflict with

1 the other. It provides in the first clause that the
2 University of Maryland shall be managed by the Regents
3 in accordance with law. In the next clause, it says,
4 shall have exclusive management. The two clauses them-
5 selves, as I say, are in complete conflict, and the
6 relative role of Legislature and governing body is not
7 clearly spelled out. We all agree that the educational
8 institutions of this State should be given a degree of
9 autonomy as much as possible as a matter of policy. We
10 also agree that the autonomy should not be complete.
11 Now, I think that any statement which carries out those
12 two fundamental desires of everybody here should be a
13 statement that is not a litigation breeder, a statement
14 that is clear and sets out the philosophy, and simply on
15 that ground as well as on the other ground, I think that
16 Mr. Scanlan's draft is a far superior draft to the
17 original language recommended by the Committee in Section
18 3.

19 THE CHAIRMAN: Dr. Bard?

20 DR. BARD: First, let me say that as an educa-
21 tor, I am perfectly delighted with the procedures that

1 we have used. I think there has been a great deal of
2 sincerity in the discussions. There has been a good
3 deal of incisiveness, and there has been some honest
4 differences of opinion openly stated. I, myself, be-
5 lieve that I will have to vote against this motion,
6 though inherently it embodies a number of elements that
7 I think are very, very good, and the reason I shall vote
8 against it is because it includes, and as may be deemed
9 appropriate by the General Assembly.

10 I think that this lies at the heart of what the
11 Committee proposed some time back, and you will remember
12 that I have stood for autonomy all along for the Univer-
13 sity of Maryland and for other institutions, and I think
14 the inclusion of this particular clause weakens the
15 very autonomy that we are seeking.

16 MR. SYKES: May I ask a question?

17 THE CHAIRMAN: Yes, sir.

18 MR. SYKES: Would the amendment be satisfac-
19 tory to Dr. Bard if that clause, as may be deemed appro-
20 priate by the General Assembly, were deleted? If so, I
21 would so move.

1 DR. BARD: Are you waiting for my answer?

2 THE CHAIRMAN: Yes, sir.

3 DR. BARD: I would like to see it read to
4 include the actual University of Maryland, and I think
5 that has been taken out. I saw no reason why that was
6 taken out. Why don't you say, provided by law for the
7 University of Maryland, State colleges, which is what
8 the Chairman has. If you put a period after agencies,
9 I will go along.

10 MR. SCANLAN: I accept both amendments.

11 MR. HOFF: I will second that.

12 THE CHAIRMAN: Then, as I understand it, the
13 motion is to substitute for Section 3, the second reading
14 as follows:

15 The governing boards provided by law for the
16 University of Maryland and the State colleges and all
17 other public institutions of higher education shall form-
18 ulate policies for their respective institutions and
19 shall have general supervision thereof in all academic
20 matters. They shall by law be granted such additional
21 powers of supervision, direction and control of their

1 respective institutions and expenditures of the funds
2 thereof as may be feasible and consistent with their
3 status as public agencies.

4 Now, Mr. Bond, you had a point of order.

5 MR. BOND: I will withdraw it.

6 THE CHAIRMAN: Mr. Sayre?

7 MR. SAYRE: Wait, this is beautiful, the way
8 the language has been worked out. My problem on the
9 original language, number one, was that I didn't want to
10 discriminate against the other schools compared with
11 Maryland. I didn't see how we could favor Maryland with
12 that kind of autonomy that didn't have, by law, in it.
13 The other problem was, I felt if I gave them exclusive
14 provision for the University of Maryland, per se, pre-
15 vented another similar body, for instance, right now the
16 University of Maryland is the University of California of
17 Maryland. What if we had a U.C.L.A.? What about another
18 board? What about all these various complications that
19 come with growth, say within twenty years, and not just
20 1980? The contradiction that I felt in there has now been
21 removed, and if we are going to have a provision in the

1 Constitution, I believe this would be acceptable to all
2 concerned and certainly will not in any way discourage
3 our continued growth.

4 MR. CASE: Mr. Chairman?

5 THE CHAIRMAN: Just a second. Dr. Jenkins?

6 DR. JENKINS: In reply to Mr. Scanlan's
7 statement, I do not consider the motions we have passed,
8 Section 3 and the amendment, to be unduly discriminatory
9 against the State colleges at this point, at least.

10 THE CHAIRMAN: Mr. Scanlan, Mr. Brooks calls
11 my attention to the fact in reading your motion as amended,
12 I said public institutions of higher education. He said
13 he thought you agreed with Dr. Bard it should be State
14 institutions.

15 MR. SCANLAN: That is correct.

16 MR. CASE: I should like to ask a question,
17 Mr. Chairman, either of you or Mr. Scanlan. Under the,
18 under Section 3 of the Committee's Report, the only
19 autonomy really that the University would have received
20 would have been the right to expend monies, budgeted to
21 it, as it thought best in the operation of the institution,

1 and that would not be subject to legislative control
2 once the appropriation had been made. Does your amend-
3 ment or what we are talking about now guarantee the same
4 right to the University?

5 MR. SCANLAN: I will answer that, but first
6 I disagree with the assumption in your question that the
7 only autonomy granted by your Section 3 was control, and
8 direction of its finances once they had been received
9 from the Legislature. Exclusive general supervision of
10 the institution meant far more to me.

11 MR. CASE: That is academic.

12 MR. SCANLAN: My second point is that certain-
13 ly the Section 3 as proposed in the pending motion would
14 permit the Legislature to continue the statutory autonomy.

15 MR. CASE: You are not answering my question.

16 THE CHAIRMAN: Just a second. Let him finish.

17 MR. SCANLAN: The Section 3 as embraced in the
18 pending motion would permit the Legislature to continue
19 or to augment the constitutional autonomy that the
20 University now enjoys, including complete control over
21 expenditure of its funds once appropriated.

1 MR. CASE: Or to take it away.

2 MR. SCANLAN: Certainly.

3 MR. CASE: So, what you are doing in effect,
4 you are seeking now reversal of the Commission's former
5 decision?

6 MR. SCANLAN: I thought we had that out by
7 agreement of the Chair.

8 MR. CASE: I want everybody to know what is
9 happening. It should be made clear.

10 DR. BARD: Say that again.

11 MR. CASE: What you are doing, in effect, is
12 reversing a decision which the Commission earlier made
13 with its 13 to 11 vote.

14 MR. SCANLAN: I am not sure what the decision
15 was. You have interpreted one way. The Chair has ruled.
16 I am not in charge of points of order. I answered your
17 substantive question. Yes, the General Assembly would
18 have the power to increase autonomy, let it remain the
19 same, or cut it back.

20 MR. CASE: So that you are, in effect, this
21 motion does reverse the action of the Commission earlier

1 taken?

2 MR. MILLER: Mr. Chairman, again --

3 THE CHAIRMAN: Just a moment. I see no point
4 in engaging in this. Each man can speak his comments
5 and make his point, and that is enough.

6 Mrs. Freedlander?

7 MRS. FREEDLANDER: I have a question. Do I
8 understand that the last phrase, and as may be deemed
9 appropriate by the General Assembly, has been removed?

10 THE CHAIRMAN: It has.

11 MRS. FREEDLANDER: Well, that means that we are
12 giving, if this passes, constitutional autonomy to all
13 institutions of higher learning, in State institutions;
14 and I would like to bring to your attention the memo from
15 Dr. Rourk, who suggested that the other institutions
16 should first pass through the phase of statutory autonomy.
17 So, in effect, by removing this phrase, we are giving
18 constitutional autonomy to all State institutions of
19 higher education.

20 THE CHAIRMAN: Mr. Bond?

21 MR. BOND: I would like to state I am more

1 persuaded by Dr. Bard's and Dr. Jenkins' comments that
2 there is no two-headed monster being created, and Section
3 3 as amended does provide for the proper degree of
4 autonomy to the University of Maryland and also encourages
5 the other State institutions of higher learning.

6 THE CHAIRMAN: Any further discussion?

7 Mr. Hoff?

8 MR. HOFF: I would point out to Mrs. Freed-
9 lander that the language here will permit, just to permit
10 action by the Legislature, just to meet the objections
11 raised in that memo, that the autonomous powers that
12 will be given these institutions may be as feasible and
13 as consistent with their status as public agencies as
14 the Legislature may feel that they deserve; and if the
15 Legislature feels that they are worthy of a degree of
16 autonomy, they will have the right to give it but need
17 not be required to give it.

18 THE CHAIRMAN: Mr. Clagett?

19 MR. CLAGETT: Mr. Chairman, I want to state
20 my position, and I want to do so very briefly. I was in
21 favor of giving autonomy to the University of Maryland.

1 I was opposed to extending it to any other State insti-
2 tutions. I am opposed to extending it any further. I
3 believe profoundly that by recognizing the University
4 of Maryland as an autonomous institution, it goes far
5 beyond the interest of education, and in the interest of
6 the welfare of the State as a whole, and for that reason,
7 I favor it and only it being given constitutional
8 autonomy.

9 THE CHAIRMAN: Any further discussion? You
10 ready for the question?

11 MR. SCANLAN: Mr. Chairman?

12 THE CHAIRMAN: Just a second. You ready for
13 the question?

14 Mr. Scanlan?

15 MR. SCANLAN: I want to say one word. It has
16 been some time since we debated the provisions of
17 original Section 3, and as Mr. Sykes reminded us, during
18 the course of his remarks and to date, Section 3 is at
19 cross purposes with its own.

20 Mr. Case impliedly assumes that this really
21 grants a great deal of constitutional autonomy, yet the

1 phrase, in accordance with law, suggests that the General
2 Assembly of Maryland has significant and perhaps the
3 same powers they now have over the University. Our pro-
4 vision, as we have provided in the pending motion, at least
5 has the advantage of clarity, and as Mr. Sykes says,
6 defining the relationship of the General Assembly and
7 defining that relationship in accordance, in relation
8 to the governing bodies of the various institutions.

9 THE CHAIRMAN: All right. Debate is closed
10 now.

11 MRS. BOTHE: I feel to allow the debate to
12 close on the Committee that composed the proposed
13 Section 3 --

14 MR. SCANLAN: Point of order.

15 THE CHAIRMAN: Just a second. Go ahead,
16 Mrs. Bothe.

17 MRS. BOTHE: The words, provided by law, as
18 the Committee proposed them, and if there is anything
19 wrong with our use of them, the language should be cor-
20 rected and not the sentiment, meant the law would have
21 to comply with the second phrase of Section 3 which

1 gave the Regents general supervision and control. It
2 was not meant in any way to give the General Assembly
3 the free hand to give and take away the right of the
4 University of Maryland's Board of Regents to manage it
5 independently as Mr. Scanlan's motion would do.

6 THE CHAIRMAN: Now, under our rules, debate
7 should be finished. Did you want to say anything,
8 Judge Walsh?

9 JUDGE WALSH: I want to ask Mr. Scanlan, under
10 his proposal, it is now before the body for action, takes
11 away or gives autonomy to the University of Maryland.
12 We have voted on that once, and we voted to give it to
13 them, and as I understand, what he is proposing to do
14 is to take it away through the back door.

15 MR. SCANLAN: Judge Walsh, my proposal was
16 not intended to take away any autonomy from the Univer-
17 sity of Maryland. It neither makes or mars the autonomy
18 they enjoy by law.

19 JUDGE WALSH: At the present time they have
20 autonomy under the statute. They haven't got any auton-
21 omy under the Constitution.

1 THE CHAIRMAN: It seems to me that we don't
2 need to repeat the entire debate. It is clear that
3 under the motion made by Mr. Scanlan, the University of
4 Maryland would not have the constitutional autonomy that
5 was provided for by Section 3, and I think he has stated
6 that that is his intention. Now, ready for the question?

7 Let me make this statement before I take the
8 vote. I don't think it need be said. I think we would
9 all understand that the Section as redrafted is more
10 in accordance with my views than either the original
11 draft of Section 3 or the draft of Section 3 as amended.
12 Nevertheless, because of the fact that Mr. Smith was here
13 this morning and is not here now, that the vote was so
14 close and notwithstanding the fact that Judge Adkins
15 abstained from voting, I don't think that goes to the
16 whole question, the Chair will abstain from voting on
17 this question also.

18 All those in favor, please signify by a show
19 of hands. Contrary? The motion fails, 10 to 11. Any
20 further amendments? Any further discussion of Section 3?

21 MR. SAYRE: Mr. Chairman, if it turns out

1 that a board is more capricious than the State Legisla-
2 ture would be, what control, is it appropriate to have
3 an amendment where there could be some appeal to the
4 State Legislature?

5 MRS. BOTHE: You can always amend the Consti-
6 tution.

7 THE CHAIRMAN: I am not sure I follow what you
8 are saying, but we can't consider anything unless you
9 have specific language. Is there any further discussion?
10 If not, this will conclude the special order of business.
11 This will end further consideration of this Section. Is
12 there any further amendment to discuss with respect to
13 this Section? If not, that concludes consideration of
14 that special order of business. We move on to the next
15 special order of business, which is the consideration of
16 whether the Legislature should be unicameral or bicameral.

17 Let's take a five-minute recess.

18 (At this time a short recess was taken.)

19 THE CHAIRMAN: Can we come to order, please?

20 The matter before you is the continuation of the
21 Seventh Report of the Committee on Legislative Department.

1 We will resume with a continuation of the Seventh Report
2 of the Committee on Legislative Department; special order
3 of business this afternoon is the consideration of the
4 Report of the Committee as to whether the Commission
5 should recommend a unicameral or bicameral Legislature.

6 DR. BARD: Roman Number Three, Page 6 of the
7 Seventh Report, represents the item not yet treated by
8 this Commission. I shall read from that Section.

9 By majority of one vote the Committee recom-
10 mends to the Commission the adoption of a bicameral
11 Legislature. The majority recognizes that the case for
12 unicameralism is almost as strong and believe that Mary-
13 land should retain its bicameral legislation. Within
14 that frame of reference we are submitting the text of
15 the Article on the Legislative Department unicameral,
16 which is the continuation of the Seventh Report so that we
17 might submit to the Convention both proposals, but at
18 this time, the Committee is recommending that in addition
19 to submitting both proposals that we make clear that we
20 mean in the direction of the bicameral Legislature: We
21 hope there will be an opportunity to hear each Member of

1 our Committee. We have a small Committee membership,
2 and we believe that because it is by majority of one,
3 it might be significant for us to hear from each one
4 briefly. However, is it authorized, Mr. Chairman, to
5 move the adoption of the Committee's recommendation?

6 THE CHAIRMAN: Yes, I think it would be simpler,
7 though, if you move the recommendation of the Commission
8 be in favor of whatever you want to recommend.

9 DR. BARD: As Chairman of the Subcommittee,
10 and I think the frame of reference is important, I
11 recommend to the Commission the adoption of, what word
12 do I want -- adoption of the recommendation.

13 THE CHAIRMAN: What is your recommendation,
14 for the bicameral?

15 DR. BARD: For the bicameral.

16 THE CHAIRMAN: I would suggest that you move
17 that the Commission recommend the bicameral Legislature.

18 MR. DELLA: Second the motion.

19 THE CHAIRMAN: Any discussion? Let me say this, as
20 I said before: The transcript is being prepared here
21 as a record for the general use of the public, but

1 primarily for the use of the Constitutional Convention,
2 as to our reasons for recommending or not recommending
3 certain things. This is one of the most important matters
4 on which we will make a recommendation. We are drafting
5 both the provisions, that is, for bicameral as well as
6 unicameral legislation, recognizing it is a matter of
7 considerable doubt or a matter of which there is consider-
8 able controversy, and we should have something more than
9 a mere vote.

10 MRS. FREEDLANDER: A point of information.
11 In order to get unicameralism on the floor, would an
12 amendment to the motion be in order that the Commission
13 recommend a unicameral Legislature?

14 THE CHAIRMAN: I don't think it is necessary.
15 I think you can tell by the vote on this. It is a very
16 narrow issue.

17 Mr. Bond?

18 MR. BOND: Wasn't there a considerable discus-
19 sion of this point at Easton?

20 THE CHAIRMAN: Not the discussion, but whether
21 the Commission should recommend one or the other. There

1 has been a good deal of discussion in committee. There
2 have been views expressed by witnesses before committees,
3 but I don't believe there has been any full statement of
4 the views of individual Members of the Commission.

5 Mr. Gentry?

6 MR. GENTRY: Speaking against the motion, I
7 point out, as apparently I believe all of us are aware,
8 that the origination of the bicameral system was, or
9 goes back to a day when one House was chosen on a geo-
10 graphical basis, and the other on population.

11 Now, because of the recent rulings of our
12 Supreme Court, that basis or that method is no longer per-
13 missible, and both Houses of any State Legislature must
14 be chosen on the basis of population. That being the
15 case, it would seem to me that you no longer have a jus-
16 tification for two Houses.

17 The Legislature can operate in much the same
18 manner that people be represented in the very same
19 manner in a unicameral Legislature as they would in a
20 bicameral. The arguments advanced in a bicameral House,
21 the passage of bills is slowed down, and it gives

1 opportunity for more consideration and deliberation of
2 legislative matters. However, I don't see where that
3 would be in any way diminished by reason of there being
4 but one House.

5 On the other hand, I feel that there is a
6 possibility where there are two Houses to pass the buck,
7 to have one House as we have seen many times in the past
8 with a great to-do, one House will pass a bill, knowing
9 all the time that it is going to be killed in the other
10 House across the hall. I don't think that system would
11 prevail in a unicameral, under a unicameral system, and I
12 think the unicameral system lends itself to more respon-
13 sible and more responsive method of legislating the
14 problems before the State.

15 For this reason, I would say that there be no
16 justification for the two Houses, because geographical
17 representation is no longer permissible, I would urge
18 our State switch over to a unicameral system.

19 THE CHAIRMAN: Dr. Jenkins?

20 DR. JENKINS: I would like to explain my vote.
21 I am in favor of a unicameral Legislature. However, I

1 am going to vote for this motion for bicameral, because
2 I think this is most acceptable to the people of Maryland
3 at this point. There is only one State with the unicameral
4 Legislature, and if this be treason --

5 THE CHAIRMAN: Mr. Della?

6 MR. DELLA: I am in support of the motion. I
7 feel that the legislation is such that when you are tied
8 up in one House where it has certain advantages to it, I
9 think it has certain disadvantages, and it is true when
10 one House may try to pass the buck; but in the last
11 couple of years I don't think this is so. You have had
12 a younger type of Legislature who is quite interested in
13 what they are doing, and I think they have been very
14 consistent in trying to get good legislation through,
15 regardless of what the other House may think. So, I
16 feel it gives you a better chance to check and double
17 check some of the legislation going through. I am saying
18 this out of experience as a lobbyist, and many times
19 things will get by people who are interested in certain
20 types of legislation, and I think it gives you a chance
21 to pick it up when it goes into the other House. I think

1 for the benefit of the State as a whole, at any time,
2 I feel that the bicameral Legislature would be best for
3 the State.

4 THE CHAIRMAN: Mr. Mindel?

5 MR. MINDEL: Mr. Chairman, as a Member of the
6 Legislative Committee and one who has been in favor of
7 unicameral from the very beginning, I would like to make
8 a few points to the Commission.

9 I would reecho what Mr. Gentry said insofar
10 as a need for bicameral existing prior to reapportion-
11 ment. We have reapportionment, and there is no need in my
12 opinion for a bicameral Legislature. In answer to Mr.
13 Della, I would suggest that he poll many of the citizens
14 of this State and find out if they don't favor unicameral
15 Legislature. In any conversation with many of the
16 people with whom I have come in contact, I think they are
17 ready for it. I think we are greatly mistaken when we
18 think the people are not ready for it, and I think up
19 until this time, this question has been postponed until
20 after the election for fear that maybe a lot of the people
21 would not vote for the constitutional amendment, and I

1 think that was all wrong. I think the people want it,
2 and I think if it is explained to them, they will accept
3 it. I think up until now, all we have done so far as the
4 Constitution is concerned in many respects, is to dress
5 it up. I think when it goes before the public, a lot
6 of the people will not understand, and they won't care
7 too much about many of the refinements that we are trying
8 to make insofar as the Constitution is concerned; but
9 I think if we present this question to them, as I think
10 it is the most significant reform we have come up with
11 yet, it is basic, and I think if it is explained to them,
12 it will generate interest; and I think in talking to
13 Mel Sykes, I think we both thought this was a forward-
14 looking thing, and I think you will get the people to
15 understand it, and they are ready for it. There is no
16 question in my mind that the unicameral Legislature will
17 be far more economical than the bicameral. Many of the
18 students of government offer many arguments in favor of
19 unicameral Legislature. I think most of the articles
20 that have been written are in favor of it. Perhaps that
21 is due to the fact that this is a change, whereas those

1 in favor of bicameral Legislature are willing to sit
2 back and let these arguments come forth. I think that the
3 unicameral Legislature will fix responsibility and/will ^{there}
4 be much less buck passing, as someone said a few minutes
5 ago.

6 Insofar as checks and balances are concerned,
7 to me that is a fallacious argument. What is there to
8 check and balance when you have reapportionment? In the
9 early days, of course, they wanted a rural section, per-
10 haps wanted to check the urban section. Now we find
11 that members coming from all over the State representing
12 the people as a whole, one person, one vote, I think
13 there is absolutely no basis for this argument on checks
14 and balances. Too many people, perhaps, are led astray
15 by the argument of checks and balances when it comes to
16 the Congress of the United States. Well, that is a horse
17 of another color, in my opinion.

18 I don't think it is necessary at all when it
19 comes to State government. We find that virtually all
20 of the municipalities, all of them have unicameral
21 Legislature, and I see no reason why we at this time can-

1 not advocate and present to the Congress an argument in
2 favor of unicameral Legislature. The time is ripe.
3 I think the people are ready for it, and we can do a
4 real service in favoring the unicameral Legislature.

5 THE CHAIRMAN: Mrs. Freedlander?

6 MRS. FREEDLANDER: I would like to also speak
7 in favor of unicameralism. This Commission voted
8 down the staggered term, so we cannot say it is a dif-
9 ference in staggered term. We do not allow one body
10 to introduce bills different from the other body. We
11 are going to, we are hoping that under our Political
12 Subdivisions proposals that there will be no local
13 legislation so that those reasons that used to be justifi-
14 cation for a bicameral Legislature are no longer valid.

15 Furthermore, we have the privilege of listening
16 to political scientists and others who appeared before
17 the Subcommittee on Legislative Department, as well as
18 the total Commission, and they felt the time was ripe
19 now to think in terms of unicameralism because of the
20 reapportionment. When the Legislature appeared before the
21 Legislative Department, I understand that several of them,

1 including the legislative leaders, I will not mention
2 names, were in favor of unicameralism when questioned
3 and also in polling people, as Mr. Mindel says, I found
4 that they liked this idea and finally, I would like to
5 state that we in the Commission could be trailblazers.
6 We could lead the people in a case of this type.

7 THE CHAIRMAN: Dr. Bard?

8 DR. BARD: Mr. Chairman, I would like very
9 much to have the views of Dr. Michener and Dr. Winslow
10 who have made special studies in this area. Might I
11 have the privilege of asking them to comment?

12 THE CHAIRMAN: We will ask those as soon as
13 the other Members have stated their position.

14 Mr. Bond?

15 MR. BOND: First, I would like to just clarify
16 what Mrs. Freedlander said. I am positive from personal
17 experience that different Houses can introduce different
18 bills pertaining to the same subject, and that matter is
19 resolved.

20 MRS. FREEDLANDER: Appropriation bills, for
21 instance, in the House of Representatives. Either one can

1 introduce the appropriation bills in the State Legisla-
2 ture.

3 MR. BOND: Also I think it was overlooked in the
4 discussion, it is proposed that the Senate be a smaller,
5 more pliable, I use the word to mean more flexible, and
6 your House would be a large body representing, having
7 many more representatives and be somewhat in closer
8 contact with the people, perhaps. I was persuaded at
9 sometime during this discussion, when I believe Governor
10 Lane, I am sure it was Governor Lane, but I will let him
11 speak for himself, in his opinion he felt it was something
12 to be gained from the checks and balances. All of us
13 who have shepherded bills through the House and through
14 the General Assembly know that there is certain gain and
15 benefit from two looks, and often our best legislation
16 is changed for the better at the second look and upon
17 amendment. For that reason, I am going to vote for bi-
18 cameralism.

19 THE CHAIRMAN: Mr. Clagett?

20 MR. CLAGETT: Mr. Chairman, I would like to
21 state my position, and it has been one I have arrived at

1 after much soul-searching and represents to some extent
2 a change of position since this Commission initially
3 met back in June of 1965. I am going to vote for
4 unicameralism, because I feel that by the redraft of
5 this Constitution where we have strengthened the local
6 government and placing a great deal of responsibility
7 at that level, the Legislature is going to have the res-
8 sponsibility of clarifying and redefining the lines
9 between the local subdivisions and the Legislature itself.

10 Where you can inject into that process a
11 degree of clarification of the responsibility of the
12 General Assembly to the local subdivisions and to the
13 electorate, I think a very real forward step will have
14 been taken insofar as representative government is con-
15 cerned. Along that line, by reason of the fact that I
16 believe firmly that a unicameral Legislature will clarify,
17 I am changing my vote and voting for it.

18 THE CHAIRMAN: Mr. Sykes?

19 MR. SYKES: Mr. Chairman, I would like to
20 address myself to one aspect of this problem. I think
21 the ultimate political decision will be made by a

1 Consitutional Convention. I think that the service
2 we can perform here is voting our own conscience on what
3 we regard as the merits of the question without regard
4 to any attempt at prognosticating what is and what isn't
5 acceptable to the majority of the people. I personally
6 feel, for reasons which I won't repeat, that we can do
7 the greatest service by stating that it is the recommend-
8 ation of this body after considering the question on its
9 merits, that we have a unicameral Legislature as a means
10 of bringing into being a new form of government which
11 looks forward rather than embalm the bicameral Legisla-
12 ture which is a fossil of an era now departed merely on
13 the theory that maybe we won't be able to explain properly
14 to the people what we are trying to do.

15 I agree with Mr. Mindel that actually if this
16 Constitution as it finally comes out, is submitted to
17 the people as a collection of dry, legalistic workings
18 of existing language, it won't have as good a chance of
19 passage as if there is a little of what I might be per-
20 mitted to call schmaltz or sex appeal in it, and I think
21 this unicameral provision is something if properly explained

1 can make people feel that the whole enterprise of
2 government in Maryland is being given a forward look.

3 THE CHAIRMAN: You want to spell schmaltz?

4 MR. SYKES: It is spelled s-c-h-m-a-l-t-z.

5 JUDGE ADKINS: I should like to make three
6 brief points in supporting bicameralism. First of all,
7 I think the point that Martin Jenkins made should be
8 reiterated. Bicameralism is thoroughly ingrained in
9 the whole framework of our Government at the Federal
10 level and also at the State level. That means to me
11 that the proponents of unicameralism have a very heavy
12 burden to bear. So far, I have heard no reason advocated
13 in favor of unicameralism except the possible saving of
14 expense.

15 Now, I am mindful of the necessity to save
16 expense, but I have not noticed that argument to prevail
17 in other areas in debates of this Commission, and I urge
18 it not be decisive in this particular debate. I think
19 that the burden has not been met, and to that extent, we
20 should follow tradition.

21 The second point I would like to make, well,

1 I would like to make one further comment, and that is to
2 say that trailblazing is fine, if we know what is at
3 the end of the trail. The political scientists will tell
4 us when they get their turn what is at the end of the
5 trail. I suggest to you what they say has not been borne
6 out in the heat of battle except in a very limited number
7 of cases. I suggest they should not be decisive in our
8 deliberation.

9 The second point I make is to discuss this
10 question of reapportionment. I think my views on that
11 subject are not entirely unknown since I have had occa-
12 sion to comment on them before. The adoption of reappor-
13 tionment does not obviate the necessity of a bicameral
14 Legislature the way I see this problem. There are
15 definite merits to the areas which are the least populated
16 in having two Houses. If I may relate it to statistics
17 in my own case, for example, my own County, we would have
18 one senator who would be representing our interests out
19 of 43. We would have two members of the Legislature
20 out of 143. To this extent we would consider the right
21 to have one out of 43 as a check against the two out of

1 143 a very precious privilege. We would urge, therefore,
2 that although our senators are themselves related to
3 population by virtue of being designated as primarily
4 responsible for our area, we do get a protection against
5 what we have chosen to call the plurality of the major-
6 ity. I do not think the argument relative to reapportion-
7 ment will stand too close analysis.

8 The third point and last I would like to
9 make is, one of the great problems in legislation is the
10 necessity to alert the people to those matters which
11 are being considered by the Legislature. All of you
12 around the table have had experience of waking up and
13 finding bills have been passed without your having had
14 adequate notice or without interest which you know about
15 having had adequate notice, and I think this is in large
16 measure obviated, this danger is obviated by having two
17 Houses.

18 First of all, many times a bill will come to
19 public attention only after a hearing. If the hearing
20 is held, it receives a certain amount of publicity.
21 That publicity in itself generates education among the

1 electorate. Many times the education is received too
2 late to be effective in the House of origin. It is not,
3 however, too late to become effective in the second
4 House, whichever it may be. I think there is a very
5 strong vested interest in having as wide dissemination
6 of pending legislation as possible. I do not think that
7 can be achieved by the unicameral system.

8 With those three reasons, I would urge we
9 adopt the Committee's recommendation.

10 THE CHAIRMAN: Mr. Martineau?

11 MR. MARTINEAU: I would like to speak in favor
12 of the unicameral Legislature and looking at the same
13 facts as Judge Adkins does, I come to the opposite con-
14 clusion.

15 First of all, I would like to address myself
16 to Dr. Jenkins' suggestion that although he is in favor
17 of unicameralism, he doesn't think the people are ready
18 for it, and he would vote against it. I think that
19 would be a serious mistake. My own personal observations
20 have been that what little polling I have done, private
21 polling, is that people are much more ready to take

1 unicameralism than we might suspect, and I think this is
2 a time when we should vote our convictions. This is
3 merely a recommendation, and we should vote what is
4 appropriate.

5 I might say in connection with that, I think
6 that if we, if the Constitutional Convention adopts
7 a bicameral Legislature, I think we will have that for
8 the next one hundred years. It is not a question of
9 giving the reapportionment bicameral Legislature a time
10 to see if it works, and if it doesn't work, we can
11 change to a unicameral. If we adopt it now, we will
12 always have it. If we adopt the unicameral Legislature
13 now, and it doesn't work out, it would not be very
14 difficult to change back to a bicameral Legislature.

15 Another point, it seems to me that those who
16 argue that the small Counties should favor a bicameral
17 Legislature because they will have greater protection
18 there, I think are making a great mistake. Take, for
19 example, my own County of Carroll, we are a smaller
20 County included in a district of a number of other Coun-
21 ties and do not have the population to elect that senator,

1 I think for all practical purposes in the smaller body of
2 the General Assembly those Counties are going to be un-
3 represented, and I think this is one, to me, one of the
4 great dangers of having a Senate which will have to be
5 represented^{by}/multi-County districts; and I would much
6 prefer to have just one House in which the representation
7 can be on as low a basis as possible; and just my last
8 point, which is just completely opposite of what Judge
9 Adkins has said, I think that with the fact of reappor-
10 tionment, those people who want to have a bicameral
11 Legislature, it seems to me, have the burden of proof
12 here, and I really have tried very hard in all the
13 debate that has been going on, involving bicameral and
14 unicameral Legislatures, to find out some reason which
15 would justify the keeping of a bicameral Legislature;
16 and I certainly have not heard any arguments which have
17 any, carry any weight as far as I am concerned with the
18 keeping of a separate House of the General Assembly with
19 all the problems and all the expense that goes along
20 with it.

21 So for that reason, I am going to vote in

1 favor of the unicameral legislation.

2 THE CHAIRMAN: Mr. Haile?

3 MR. HAILE: An argument can also be based
4 on experience as well as reason, and I would like to
5 state my experience with a unicameral Legislature.
6 The duty of this group here, this Commission, is that
7 we come from different backgrounds and experiences.
8 Mine has been for 600,000 people for the past ten years.
9 Now, the most serious argument against unicameral
10 Legislature is that unwise legislation might get through
11 whereas if there are two Houses, it would be caught up.

12 From experience, however, it seems that
13 there are five things working with unicameral which mini-
14 mizes the passage of unwise legislation; first, the
15 executive veto; second, there is a referendum reserved to
16 the people; thirdly is the press and publicity and the
17 molding through that of public opinion which works
18 directly on unicameral legislation, and fourth is the
19 Judiciary, which strikes down any illegal legislation,
20 and fifth is the power of the unicameral Legislature to
21 amend many laws which have proven unwise.

1 Therefore, from experience, I would favor
2 that we recommend to the Convention a unicameral Legis-
3 lature.

4 THE CHAIRMAN: Mr. Miller?

5 MR. MILLER: Mr. Chairman, as a Member of the
6 Committee, I am one of the Legislative Committee that
7 hasn't changed his views. I still favor the bicameral
8 system. It is partly, perhaps, because of personal ex-
9 perience. I have never served in the Maryland Legisla-
10 ture, but certainly anybody that served in the United
11 States Congress could point out dozens of instances where
12 the two-chamber system has saved the country a great
13 deal of embarrassment.

14 The objections to conference committees when
15 the two Houses vote modifications of the same measure --
16 the idea that those are normally smoke-filled rooms
17 where deals are made is in at least my personal experience,
18 and I have sat on a good many of them, they have produced
19 some of the best legislation, and it has to pass both
20 bodies, comes out of such, a compromise.

21 The pragmatic test, however, is that not only

1 on the Federal level but in the whole thumping majority
2 of the State, the system we have had is a good system.
3 It is the best ever devised and one of the fairest and
4 can show a lot to be said about the unicameral system,
5 it isn't proven as is the present system of two chambers.

6 One thing I think that people, if we had
7 just one body with forty or fifty members representing
8 the whole State, if there is a best quality, it wouldn't
9 ruin anything to have it done that way, but those men
10 would have a tremendous burden with only forty or fifty
11 legislators for the whole State, it would practically
12 and particularly as we were talking of limited sessions,
13 it would practically mean that everybody had to serve
14 on several committees, and the result would be that the
15 committee activity would be greatly hampered, in my opinion.

16 One other point that I think is very impor-
17 tant, and it certainly has been true, both on the State
18 and on the Federal level, is that the legislative body
19 gets a great deal of benefit from just the man on the
20 street, the fellow that comes in and says, What are you
21 going to do about this, or, You ought to do that. Well,

1 if there is only one voice for a whole great area in the
2 State, the opportunities of that one man to meet as
3 many people as in two chambers, a chance to keep in touch
4 with the public sentiment is greatly reduced by the very
5 shortage of numbers.

6 Last but not least, I think this: I disagree
7 with some of the arguments that it would be, that now
8 is the time to put to the test, we have got a great
9 many important things in this new Constitution that we
10 hope will be adopted, that we drafted. There are very
11 fundamental changes, as I understand it, in our Judiciary.
12 If our local self-government goes through -- and a dozen
13 other points -- but I can't help believe that if we go
14 and adopt something that comes as a shock to a great many,
15 that we don't all talk to, depart from a system that has
16 stood Maryland and the country in good stead, to try a
17 new experiment, I think it is a danger that all of our
18 work will suffer because they will say these people are
19 just going to change everything, and let's vote it down.

20 Now, I may be wrong about the public reaction,
21 but I can't help but feel there is some danger of that.

1 Consequently, I am still in favor of a bicameral system.

2 THE CHAIRMAN: Any further comment by Members
3 of the Commission?

4 Mr. Scanlan?

5 MR. SCANLAN: As the Chairman noted, the vote
6 in our Committee was 3 to 2. He more accurately could
7 have said it was 2 and 3/4ths to 2 and 1/4th. Even as
8 the hour of voting approaches, I still have reservations
9 in my vote, although I lean toward the bicameral system.
10 On that I would like to make a couple of points to put
11 the case for bicameralism a little stronger.

12 It is not quite accurate to say that the
13 bicameral system arose out of the geographical situation
14 where one House was' looked upon as a rural check on the
15 urban elements. In point of fact, when the bicameral
16 Legislatures of this country were first created, they were
17 based on population. Following the Civil War, with the
18 Legislatures not reapportioned, the system did grow up
19 in many States, in Maryland, one House had misrepresenta-
20 tion which favored one area over the other.

21 Woodrow Wilson pointed out that the bicameral

1 system that the States had, had no necessary relation
2 to the Federal analogy. He said no principle is involved
3 in this, but tempering legislation, taking a second look.
4 This was the original basis for the original bicameral
5 and on that point, the record should be clear.

6 Secondly, I noticed a number of States have
7 had this problem in recent years, particularly the States
8 of Alaska, Hawaii, Michigan, Kentucky and Rhode Island,
9 I don't believe any one of those States has elected to
10 adopt in their new Constitutions the bicameral system.
11 In point of fact, I think it far more important to have --
12 whatever the form of the Legislature, the more important
13 thing is that it be efficient. You could have a bicameral
14 Legislature with modern powers of investigation, with
15 staggered terms, with continued sessions, with strong
16 committee systems, which would be far better and far more
17 efficient than a unicameral Legislature that didn't have
18 the things mentioned.

19 A bicameral Legislature with all these modern
20 reforms in opposition to a unicameral Legislature with
21 all these modern reforms -- what would I say? In the end

1 I would fall back on the historical argument, this is
2 the way we have done it from time immemorial and unless
3 there are really compelling reasons to do it another way,
4 I for one, despite the fact I see the advantage in
5 economics and perhaps from the point of view of efficien-
6 cy, in the unicameral Legislature, I think it a difficult
7 step.

8 If I thought for a moment that the new Con-
9 stitution would be endangered by our adoption or recom-
10 mendation of a bicameral -- of a unicameral system, I
11 would have no reservations about my vote. I can't be
12 sure about that, so as I vote, I still have reservations.

13 THE CHAIRMAN: Any further discussion?

14 Mr. Sayre?

15 MR. SAYRE: In retrospect, Mr. Scanlan used
16 to say the bicameral Legislature of Maryland had never
17 been given a chance to work properly, and I would say,
18 Well, if it were, the very same things that would make it
19 work properly would also apply to unicameral Legislature,
20 the matter of staffing and alteration and all the rest.
21 I don't know how many read this material that we all

1 received here, but it points out that although we have
2 known the bicameral system throughout most of our history,
3 the national Government under the Articles of Confedera-
4 tion had unicameral Legislature and Benjamin Franklin,
5 whom I think was a great man, also favored the unicameral
6 Legislature even for our Federal Government.

7 Now, if we are going to really speak of
8 strengthening government, number one, so that the people's
9 will can be better expressed, this means strengthening
10 the departments of government. Now, I think that we
11 have very significantly strengthened the Judiciary and
12 the Executive Departments. We have yet to act upon what
13 I regard as the fourth arm of our Government, that is
14 local government, and right now is when we are going to
15 settle whether or not we are going to strengthen the
16 Legislative Department.

17 Now, I would say that rather than lead off
18 with a bicameral recommendation that it would be wise
19 to lead off not only from the public relations viewpoint
20 to get some discussion about our activity, but to lead
21 off so there is discussion on the merits of bicameral

1 versus unicameral. If we don't really have that much
2 reservation amongst those who do for the unicameral,
3 it would make it so that you would have between now and
4 the time of the Convention for people to be talking about
5 this.

6 Now, I am just sure from the appointments I
7 have that the people don't care one way or the other.
8 If we do reduce cost, they would be in favor of that.
9 If we could increase the quality of our Legislature, they
10 would be in favor of that. If we could elevate the
11 stature of our Legislature, they would be in favor of
12 that. I know of no other way than to elevate the stature
13 of the Legislature than to have them actually represent
14 more people, as for example, the Council of Los Angeles
15 represents where you would rather be a councilman than
16 a legislator. I would name our Legislature to the Senate.
17 I would do the same thing as we have done in the District
18 Court, make it stand out where they have greater respon-
19 sibility and as a result of this greater responsibility,
20 we are going to get people who will be more inclined
21 to serve in the Legislature who before would much rather

1 go ahead and talk and try to be influential but go
2 about their business because they can't afford to be in
3 the Legislature, it doesn't have the attractiveness for
4 their talents. [We], and this is getting back to the mat-
5 ter of population, we are going to become more and more
6 an urban nation. Within another twenty years, 70 per
7 cent of our population will reside in suburban and
8 urban areas. This means there is going to be smaller
9 and smaller vote, I think, representing the territories
10 as such.

11 Where do we get the greater strnegth for those
12 people who don't have the vote of the Legislature? It
13 is through a strong local, district or regional govern-
14 ment who would be able to have its proper representation
15 in the Legislature, because it has to be concerned with
16 areas. If we take a whole perspective of where we are
17 involved, we need to have a body that can take a stronger
18 look at the legislation, be able to introduce half as
19 much legislation as a bicameral Legislature will do and
20 would be able to have certain procedures that actually
21 will provide a closer look at the legislation that goes

1 through, so there is not the buck passing. In this last
2 legislative session --

3 THE CHAIRMAN: Mr. Sayre, you are a minute
4 over your time.

5 MR. SAYRE: I am trying to go as fast as I can.
6 In the last legislative session, sixteen bills passed
7 the Senate, passed on down to the House, as unconstitu-
8 tional. They said, We will let the House catch that. The
9 House did catch it. Senator Duerr said, I want the
10 Speaker to know that the House passed unconstitutional
11 matters proposed by the Senate. To sum up, I think that
12 we should lead off with what we regard as logical and
13 that we should take this step for discussion so that if we do
14 decide that this is a more favorable way to do legisla-
15 tion, there is time for the public to talk about it.

16 THE CHAIRMAN: Dr. Winslow?

17 DR. WINSLOW: Mr. Chairman, I should like to
18 suggest as a political scientist that I am not intending
19 to prophesy. I have no intention of suggesting where
20 we will end up if we adopt unicameralism, because I
21 don't know. But I should like to point out that virtually

1 all of the political scientists in this country who have
2 specialized at all in the field of State government
3 favor the adoption of a unicameral system of legislation.
4 The few that are on the other side are conspicuous.
5 Now, this doesn't make it profitable, but it does put
6 some quality, I think, on proposition. If we were to
7 do what was suggested here a few minutes ago, to follow
8 tradition because we don't know where we will end up,
9 if we depart from tradition, I suggest that this Commis-
10 sion is wrong from the beginning for the reason that
11 for forty years or so, the political scientists of this
12 country have been saying our State Constitutions are too
13 long. They say they ought to be brief and to the point.
14 They are just now, constitutional conventions and con-
15 stitutional writers are just now beginning to follow
16 this advice.

17 If we were to follow tradition, we would have
18 kept the same old long Constitution that we have had.
19 I should like to say only one other thing. As has been
20 pointed out with the disappearance of a different basis
21 of representation in the House and Senate, the chief

1 reason for bicameralism had disappeared. The only reason
2 that remains that I can see is the argument of check
3 and balance, that one House reconsiders what the other
4 House has done, and thus we get safety in our legislation.
5 I have been studying this matter of legislation longer
6 than anyone else in this room, chiefly for the reason
7 I have had more time to do it. But starting at least in
8 1927, which is at least thirty-nine years ago, I put a
9 great deal of attention to the question of State Legis-
10 latures. That qualifies me, perhaps, for an opinion.

11 I watched this business of checks and balances
12 with considerable care. I sat in a committee of a State
13 Legislature some years ago where bills from the other
14 House were being considered. In 45 minutes that committee
15 disposed of 17 laws which they^{had}/never laid eyes on before
16 which they had no time to read, which they didn't even
17 give the substance of, and if you know as I suppose you
18 do, that the Houses of State Legislatures almost without
19 exception follow the instructions of their, the recom-
20 mendations of their committees, this is not, I would say,
21 careful reconsideration. Moreover, if you make a calendar

1 of the time schedule when bills are introduced in each
2 House and then pass over from one House to the other, you
3 discover that the number of bills going to the second
4 House in the last ten days of the session, and this is
5 true in Maryland as it is true elsewhere, the number of
6 bills going to the second House in the last ten days of
7 the session are so large that there is not possibly time
8 for careful reconsideration, and very few of them get
9 careful reconsideration to the point that over and over
10 again, and I can name cases where bills have been passed
11 by one House without regard for the feelings of the
12 author on the basis that the other House would catch
13 them, and the other House hasn't caught them because they
14 say, This bill has been carefully considered in the first
15 House. It seems to me that this Commission would do well
16 to adopt the unicameral idea.

17 THE CHAIRMAN: Dr. Michener?

18 DR. MICH ENER: The point was made earlier that
19 unicameral represents a new and untried system that we
20 shouldn't adopt in the dark. I would just point out, in
21 this country almost all cities have bicameral Legislature

1 for the City Council, and they proved unsatisfactory.
2 The experience with unicameral Legislatures has made
3 the system clearly familiar to the voters of the State.
4 It has proved very successful, and we are embarking on a
5 new untried system. There is also the experience of
6 Nebraska which many people are familiar with there.

7 Second, the question was raised about the
8 possibility of hasty, ill-considered legislation. I
9 would like to suggest here that the argument of the
10 checks and balances arose years ago before we had things
11 such as legislative councils to look at the matters at
12 leisure, to draft a bill as carefully, to make sure
13 all people are heard, and they were thoroughly considered.
14 It arose before the professional legislative drafting
15 services ^{make} could / sure the laws reflect the intent of
16 the sponsors, and it arose before we put into our own
17 Constitution that there has to be a three-day wait from
18 the time the bill is drafted in its final form until it
19 can be voted on. There is ample time for the press to
20 pick it up and be in the papers for the people to have
21 their voices heard in the Legislature. There can be

1 nothing slipped over or on the sly or in the dark. In
2 the requirement we have adopted that all votes must be
3 recorded in the journal, there is no way for a person
4 to vote on a bill and not have the people know how he
5 voted. He can no longer dodge the issue and say, This
6 is a compromise. I had to take, or I had to take it
7 though I didn't like it, or have nothing. He stands
8 clearly on the record for voting for or against the
9 measure, and everyone knows how he stands. This seems
10 to me that this alone is perhaps the greatest advantage
11 of unicameralism in that it pinpoints responsibility,
12 the voters can see how their representative stands and
13 how he voted, and this in itself is perhaps the greatest
14 check against hasty, unwise legislation.

15 THE CHAIRMAN: Mr. Brooks?

16 MR. BROOKS: The experience of constitutional
17 conventions has pretty well demonstrated if they have
18 had any kind of reporter from a commission or board to
19 work from, that the existing Constitutions of a State
20 tend to be the minimum limits of change in regard to
21 those proposed on a convention. Any reports submitted

1 to a committee tend to be the maximum amount of change.
2 There are very few and rare exceptions where a convention
3 considers questions that involve more changes than are
4 encompassed in a report to a convention.

5 For that reason, I think, personally, that it
6 is very important that the Commission consider not
7 just having in its work book a unicameral document and
8 the supporting papers for a particular viewpoint of that
9 nature, but that it do more than that if it really feels
10 that the subject of unicameralism deserves any significant
11 attention by the Convention itself. I think it does
12 deserve that amount of attention. Only this Commission
13 can really give it the attention and cast the light on it
14 that would acquire that kind of regard in the Constitu-
15 tional Convention. Moreover, I wanted to mention, in
16 regard to the research our staff has done, that it is
17 interesting to note the conference committees were only
18 used on two occasions in the last Legislature for which
19 that information is available, 1965, that the amount of
20 second review, so to speak, of legislation passed in one
21 House after it is sent to the other House amounts to

1 approximately 7 per cent of the total amount of legis-
2 lation of a State nature, excluding that of a local
3 nature. So, if we were to follow under the proposal of
4 the Committee on Local Government, Political Subdivisions,
5 a home rule procedure eliminating from the Legislature
6 the responsibility for local legislation and the State
7 were just to consider State matters, if experience is
8 any teacher, then the second review amounts to about 7
9 per cent of that legislation and weighed against the
10 price of that as compared to possible advantage of a
11 unicameral legislation where each member is a more impor-
12 tant legislator than he is in a bicameral system, since
13 the spotlight of responsibility is directly upon the pro-
14 ponents of each measure, since the proponent who intro-
15 duces it and carries through a bill will pretty well be
16 the determinant of the success or failure of the measure
17 rather than relying on another House to take care of the
18 measure which may be ill-conceived to begin with, each
19 legislator would be given a great deal more service,
20 secretarial and research as well as given an increase
21 in salary.

1 Perhaps the easiest way to reduce the cost of
2 the legislative system if all of these measures are
3 taken would be, rather than to reduce the representation
4 of any segment of the State in both Houses, to have a
5 maximum amount of representation by having the maximum
6 number of legislative districts and yet the minimum num-
7 ber of legislators which suggest a unicameral system and
8 eliminating one House altogether with its overlapping
9 representation. There is a great deal to commend it, and
10 certainly enough so that it should be considered by a
11 constitutional convention.

12 MR. BOND: I would like to ask Mr. Brooks a
13 question. On our research, you said there were only a
14 certain percentage of conference committees. Is it not
15 true your research did not disclose the great number of
16 joint committees which investigated problems pressing to
17 the State and took the problem back to both Houses?
18 You show nothing about joint committees of the Legisla-
19 tive Council or of the two Houses that worked on the
20 problem.

21 MR. BROOKS: That is right. That is prior to

1 the introduction of the legislation.

2 THE CHAIRMAN: Governor?

3 GOVERNOR LANE: I think that the request to
4 present the problem after all, we only recommend, at
5 times our debate goes to the extent of ultimate decision.
6 It is the Convention that is going to decide. I think,
7 and maybe because of my lack of knowledge of the resultant
8 operation of the unicameral system, I hesitate to give
9 up the bicameral system because with respect to informing
10 the public, oftentimes, unfortunately, the public isn't
11 advised as to what is going on and they catch up only
12 after it is done, and therefore, there is no reason to
13 further consider it. I did say when I was talking to
14 one of the Committees that it is a good thing to have in
15 the bicameral system, no matter what is currently or has
16 been the trouble with it, that it even, and I reluctantly
17 say this, where there is opposition between two Houses,
18 it even benefits the Governor in knowing, hearing what
19 the opposition is although he is just upstairs on the
20 second floor. I know in my more distant experience that
21 it was very helpful to me, and I hesitate, although it is

1 maybe more expensive to give up what I think we have had.
2 for such a long time, that is not a good reason. I know
3 that, but you don't run with both feet at the same time,
4 and my hesitation is to keep what we've got. I am in
5 favor of having the presentation for any statement at
6 all that can be made of the virtues of a unicameral
7 system. My feeling is that the degree of its importance
8 and on the assumption that I am wrong in my thinking,
9 I think it ought to be presented to the Convention so
10 that they can make up their minds. I am just in a posi-
11 tion where I don't like to give up the thing that I,
12 at times, had to live with and which I got so much help.

13 THE CHAIRMAN: I would like to state my views
14 before we take a vote. It seems to me that this is
15 another of those situations where logic is perhaps at war
16 with tradition and experience, because it seems to me
17 that by and large the force of logic and the reasons of
18 logic are in favor of unicameral Legislature, although
19 I do not think this is wholly the case.

20 However, it seems to me that our tradition and
21 experience counts for a great deal, and some of the

1 arguments that logically lead us towards the favoring of
2 the unicameral legislation may not in actual practice
3 lead us that way. The suggestion, for instance, that
4 the unicameral Legislatures have worked well at the
5 municipal level does not, it seems to me, demonstrate
6 that they will work well at the State level. It seems
7 to me there are many differences in the operation of the
8 State government and the local government. The fact
9 that the system of check and balance in the bicameral
10 Legislature has not worked too well in practice, in many,
11 many instances, it has undoubtedly, but I think this is
12 in large part due to the tremendous mass of local legis-
13 lation with which the Legislature has had to contend
14 and concomitant to that there is the notion of legislative
15 courtesy, so that on a local bill neither House pays any
16 attention to the merits or demerits, but goes along with
17 what the senator or local delegation in the House will
18 want.

19 Hopefully, this will be ended with the taking
20 away from the Legislature the power to pass local legis-
21 lation. But it seems to me by the same token, we go

1 back perhaps to the arguments at the time of the forma-
2 tion of our own country when they weren't confronted
3 with these problems of mass legislation and were looking
4 at it more in the abstract, and it seems to me that the
5 arguments, then, in favor of bicameralism outweighed
6 to some extent the arguments in favor of unicameralism.

7 I think it is awfully close and myself,
8 personally my view might change completely after the
9 next session of the Legislature, because that is the
10 first session of the Legislature when they are going to
11 have one man, one vote principle in at least one House,
12 although I think as Judge Adkins observed, we don't
13 have exactly one man and one vote in both Houses. I
14 don't think the two of them are necessarily equal. In
15 any event, I think that the question is an important one
16 and if the scales in my mind were decidedly in favor of
17 unicameralism, I would unhesitantly vote in that way.
18 They are in a state of imbalance, but weigh slightly in
19 the way of bicameralism. That is the way I will vote.

20 Dr. Bard, you may close.

21 DR. BARD: Mr. Chairman, it is rather unusual

1 to move in one direction and speak in the other. I moved
2 in terms of the Committee vote rather than my own feeling.
3 If you think after I have spoken it will be better for
4 another Member of the Committee to speak, I will be glad
5 to do so. Our Committee was very, very sensitively
6 balanced, and each Member of the Committee has spoken
7 but the Chairman of the Committee. My vote, like
8 Mr. Eney's is one that is personally sensitively balanced.
9 However, the balance weighs, as I would see it, in favor
10 of unicameralism and I shall indicate very briefly why
11 I will vote against this motion, which I made as a
12 Committee Chairman.

13 First, I have had the privilege of spending
14 a good deal of time in Nebraska, and I have had the privi-
15 lege of watching the Nebraska Legislature in action. In-
16 deed, Nebraska is my second State. I lived there ten
17 summers and observed very carefully how the Legislature
18 operates. I think it works efficiently, I think it works
19 with dispatch, I think it works economically, and I think
20 it works with a good deal of forethought. I have noted,
21 too, that this matter of the structure for hearings and

1 if you have had an opportunity to read the paper dealing
2 with some of the reasons why the unicameral system has
3 worked successfully in Nebraska, which we passed out,
4 you will note there is time for the public to become
5 acquainted with what is taking place, that the way the
6 hearings are structured, and if you follow the history
7 of the bill, you see that there are gaps within the
8 structure so that the public could become aware of oc-
9 currences.

10 There is another reason which I think has
11 application to Maryland, that is the dramatic change
12 which George Norris brought to Nebraska created a new
13 lever for interest on the part of the public as a whole.
14 Almost overnight the people of Nebraska were excited about
15 new opportunities which they had because there was a new
16 structure. It may be true that inherently the differences
17 were not sharp, but nevertheless it is important once
18 in a while to move to a new structure when we think that
19 it is significant. At our own hearings you will remember
20 those in attendance, that many of the State senators in
21 Maryland including the President of the State Senate

1 indicated that they favored unicameralism because they
2 felt that it would save a good deal of time and that
3 ultimately, actually this matter being at cross purposes,
4 was not true.

5 Yet another reason I would like to mention is
6 the fact that our balance would become overcrowded,
7 and not only is this bad within the symbol itself --
8 I know in some of our districts we have as many as eighty
9 items on which to vote in the primary, in the last prim-
10 ary -- not only is this indicative of the symbol of the
11 primary, but indicative of the fact that there are so
12 many people that one needs to relate if he lives in a
13 particular legislative district. This is especially in
14 a city like Baltimore, that there are complexities in
15 this situation, and to have a smaller number of represen-
16 tatives is indeed good.

17 Now, I think, too, the mere fact that the
18 model State Constitution which has been put together by
19 people who have made years of study on this question,
20 and here the recommendation was strongly in favor of uni-
21 cameralism, I would like to indicate now one reason that
~~has not been mentioned as to why I do not think this~~

1 whole question is one of complete balance on one side.
2 You will note this has not been mentioned that the
3 Nebraska State Legislature is nonpartisan. People are
4 elected not on the basis of party representation. This
5 is one thing that does concern me, for I do believe that
6 the party system is important, and that the two parties
7 of Maryland do have significance, and I tend to think
8 perhaps the nonpartisan relationship of the Nebraska
9 Legislature is something that might be troublesome, and
10 I would like to call this to the attention of the Conven-
11 tion itself.

12 Just one point on this: It makes it a little
13 bit more difficult to center the leadership role. They
14 have found a way to get around this which I think is
15 good. However, I think some of my colleagues would want
16 to deal with this. As I weigh the scales, I weight them
17 slightly in favor of unicameralism.

18 THE CHAIRMAN: Ladies and Gentlemen, as we
19 move into the vote on this very, very crucial question,
20 I can't help but call your attention to the fact that the
21 Commission, those present today are 25. We have a full

1 Commission membership present except for Mr. Miles, who
2 is ill, and Mr. Smith, who had to leave.

3 Ready for the question? All those in favor
4 of the recommendation of the Committee, which is in favor
5 of bicameralism, please signify by a show of hands. A
6 vote of Aye is in favor of bicameralism. All those
7 opposed, or a vote No, is a vote in favor of unicameralism.
8 The vote is 13 to 12.

9 MR. SCANLAN: Mr. Chairman, I will ask for a
10 reconsideration of the vote. I am not doubting the count
11 of the Chair, but I have had a change of mind.

12 THE CHAIRMAN: You voted in the affirmative?

13 MR. SCANLAN: Yes. I shall now abstain.

14 THE CHAIRMAN: I point out to you that doesn't
15 help the recommendation because we would not have a recom-
16 mendation, and we must have a recommendation.

17 MR. SCANLAN: I withdraw my motion for recon-
18 sideration. I wish I could have voted like Frank did in
19 a couple of cases.

20 THE CHAIRMAN: Mrs. Bothe?

21 MRS. BOTHE: I think a revote with an abstention,

1 the Chairman would have to break the tie.

2 THE CHAIRMAN: It would be 12 to 12 with no
3 recommendation.

4 Any further discussion of the question of
5 unicameralism?

6 DR. BARD: Mr. Chairman, it is clear that
7 this close vote will be called to the attention of the
8 Convention.

9 THE CHAIRMAN: Oh, yes indeed. All the close
10 votes are going to be noted in the Report, and the al-
11 ternate, of course, will be here, and I want to not
12 leave the subject until we have considered the alternate.

13 Mrs. Bothe?

14 MRS. BOTHE: Dr. Bard's remark just now con-
15 fused me; the vote we took in no way reflected any
16 recommendation regarding partisan or nonpartisan repre-
17 sentation?

18 THE CHAIRMAN: No, I don't think so.

19 DR. JENKINS: The record should show that on
20 the merits of unicameralism and bicameralism, the majority
21 of the Commission is undoubtedly in favor of bicameralism.

1 This is just for the record. I am talking about on the
2 merits.

3 THE CHAIRMAN: Any further discussion? Now,
4 Dr. Bard, you have presented with your Report a draft of
5 an Article, Legislative Article to the Constitution
6 which would provide for a unicameral Legislature, and
7 this would be included in our Report, and therefore
8 be recommended in the sense that the language would be
9 recommended. Can you, without too much time, indicate
10 to us the basic changes or where they occur in this
11 draft?

12 DR. BARD: I will ask Dr. Michener to do it,
13 because he was the chief draftsman of that segment.

14 THE CHAIRMAN: I wondered if perhaps we can
15 do it in this way. I don't want to waste time just
16 repeating things, but in drafting the Legislative Article
17 to provide for unicameralism, I assume that you have, to
18 the extent possible and consistent with the unicameral
19 Legislature, incorporated all other provisions that the
20 Commission has heretofore approved.

21 DR. MICHENER: Yes.

1 THE CHAIRMAN: And I assume you made no
2 changes in the draft except such as were absolutely
3 necessary to fit into the scheme of unicameral Legisla-
4 ture?

5 DR. MICHENER: That is right, based on the
6 Seventh Report as acted on by the Commission. The only
7 thing where the two Houses are referred to as the General
8 Assembly and where it has a substantive change was pri-
9 marily on impeachment. It is where you don't have a
10 senate to try impeachment, it says, Once the Assembly
11 brings impeachment proceedings, and impeaches the officer,
12 trial will be as provided by law. Otherwise, it follows.

13 THE CHAIRMAN: Were there any other than that,
14 were there any others where the changes necessary were
15 merely word changes, where they involved any kind of
16 change of substance?

17 DR. MICHENER: That is the only one of some
18 substance.

19 THE CHAIRMAN: Dr. Burdette?

20 DR. BURDETTE: I have here the draft which
21 was passed out last time, and the other Dr. Michener is

1 talking about is still making some changes in that. Now,
2 for example, with respect to the --

3 THE CHAIRMAN: The meeting of the session of
4 the Legislature?

5 DR. BURDETTE: Yes, the Governor may convene
6 the Legislature in special session, but I think we voted
7 upon the question of the majority of the Members of the
8 General Assembly.

9 DR. MICHENER: This was as was submitted last
10 time. This hasn't been changed.

11 THE CHAIRMAN: This will have to be further
12 amended to incorporate the changes made last time.

13 DR. BURDETTE: Can we obtain a consensus and
14 save time that the vote we had last time on the two-House
15 arrangement would apply to the one House?

16 THE CHAIRMAN: Well, I am going to assume,
17 Dr. Burdette, that that is true inasmuch as we simply
18 said we would draft an alternate provision.

19 DR. BARD: One illustration of that is the
20 impeachment power which we were assigned to adjust,
21 Mr. Chairman, and Dr. Burdette, we will make that adjust-

1 ment in that case the same way as we will in the basic
2 recommendation on bicameralism.

3 THE CHAIRMAN: Mr. Miller?

4 MR. MILLER: Have we ever decided whether
5 these things are going to be three-fifths or two-thirds?

6 THE CHAIRMAN: That is on the agenda for this
7 session. There is a memo, and we have picked out the
8 instances in which there is one or the other. We hope
9 to decide that before this meeting is over, but not this
10 afternoon.

11 Any further discussion on unicameralism?
12 Any question about the draft of the Legislative Article
13 based on unicameral Legislature? Well then, that, I think
14 concludes that special order of business.

15 The next special order of business is the
16 Sixth Report of the Committee on Political Subdivisions.
17 In connection with that draft, there is another memo;
18 there are two other memoranda, one called a staff memo, and
19 the other called a proposed draft. Let me say a word as
20 to the proposed draft, so it can be identified. This
21 represents my efforts, so if you put the initials H.V.E.

1 on it, it might be identified. It was not intended to be
2 circulated because it was dictated, and I didn't have a
3 chance to read it over again. The Staff thought it might
4 be desirable to have it before you.

5 It is a Xerox paper, headed Constitutional
6 Convention Commission Proposed Draft, Article 11, Local
7 Government, and is four pages.

8 (At this time a short recess was taken.)

9 THE CHAIRMAN: All right, may we come to
10 order? We now consider the third item of special busi-
11 ness, the Sixth Report of the Committee on Political
12 Subdivisions and Local Legislation.

13 Mr. Clagett?

14 MR. CLAGETT: Mr. Chairman, I cannot but men-
15 tion at the outset the predominant sentiment of myself
16 and the Committee as one, and that is, we never thought
17 this day would come, and here it is. So here we go.

18 You will recall that back on September 20 we
19 began the consideration of what was then called a pre-
20 liminary draft not for publication of a Fifth Report, and
21 we had gone through the section there consisting of

1 of Section 11.01, Organization of Local Government, and
2 Section 11.02, which was Powers of County Governments;
3 and we suspended consideration of that preliminary draft
4 at Section 11.03 which began with the structure of
5 County government, and then left for consideration 11.04,
6 City government.

7 I would like to know the pleasure of the Chair
8 whether we should continue with Sections 11.03 and 11.04
9 dealing with the structure of County government and City
10 government, and then come back to the matter that had been
11 considered and the Committee directed to further con-
12 sideration and make certain changes.

13 THE CHAIRMAN: Mr. Clagett, the various pro-
14 visions dovetail to such an extent that I think it would
15 be better to start at the beginning and take up each
16 Section anew. The earlier Sections had been changed sub-
17 stantially since the last meeting of the Commission, I
18 think.

19 MR. CLAGETT: On that basis, would you prefer
20 that we read section by section, and then open it up for
21 discussion?

1 THE CHAIRMAN: I think so.

2 MR. CLAGETT: Because I would think there
3 would be no useful statement. Let's dig right in. I am
4 now referring to the Section 11.01 which is captioned,
5 Units of Local Government, Subsection (a) The units of
6 government within the State shall be regions, counties,
7 and cities. (b) The General Assembly may provide by
8 law for the creation, incorporation, changing, merging
9 and dissolution of regions and counties. (c) For the
10 purpose of this Constitution, Baltimore City shall be
11 considered a county. (d) No other intergovernmental
12 public corporations, commissions, authorities, boards,
13 or special districts possessing the power to contract
14 indebtedness, to collect taxes, or to collect revenues
15 shall be created to perform any governmental function
16 over an area smaller than the entire State.

17 No new County shall be created without the
18 consent of a majority of the voters voting thereon who
19 reside within the area of the proposed County. The lines
20 of a County shall not be changed without the consent of a
21 majority of the voters voting thereon who reside within

1 the area proposed to be transferred from one County to
2 another. The lines of more than three contiguous Coun-
3 ties, but less than all the Counties, shall not be
4 changed without the consent of a majority of the voters
5 of the State voting thereon.

6 Now, the significant changes here are that
7 we have captioned the Section, Units of Local Government,
8 rather than Organization of Local Government, and we
9 have in Subsection (a) retained the concept of Baltimore
10 City being treated as a County, thus making 24 Counties
11 throughout the State; and we have given definition to
12 municipal corporations as a phrase. We have there defined
13 it to mean a city, town or village but shall not include
14 Baltimore City or any County.

15 THE CHAIRMAN: Any questions?

16 JUDGE ADKINS: I think the word, incorporated,
17 ought to precede the words, city, town or village. It
18 doesn't mean what it says. It doesn't mean a village.

19 THE CHAIRMAN: Mr. Clagett?

20 MR. CLAGETT: Let me see, Judge. I don't
21 think I understand your point.

1 JUDGE ADKINS: Municiapl corporations shall
2 mean an incorporated city, town or village. It
3 obviously doesn't mean a village.

4 THE CHAIRMAN: It seems to me the point is
5 well taken. You mean only a city, town or village which
6 is incorporated and is exercising powers of government?

7 MR. CLAGETT: That is the meaning, and if it
8 clarifies the meaning by including the word, incorporated,
9 in front of, city, I would have no objection; and I don't
10 believe the Committee would.

11 THE CHAIRMAN: Is there any objection? In
12 the third line of 11.01, strike the word, city, and
13 add, incorporated. Any further question about 11.01 (a)?

14 MR. CASE: Mr. Chairman, are we going to be
15 allowed to come back to this?

16 THE CHAIRMAN: Yes. You can't very well pass
17 finally until you get the whole picture in front of you.
18 Any further questions now about Section 11.01 (a)? If
19 not, 11.01 (b).

20 Dr. Bard?

21 DR. BARD: May I ask Mr. Clagett as to why

1 the, lines of more than three contiguous Counties?

2 MR. CLAGETT: That is in Subsection (b).

3 DR. BARD: That is correct.

4 MR. CLAGETT: And with respect to Subsection
5 (b), it was thought there should be a referendum pro-
6 vided with some degree of inflexibility to boundary
7 changes, and it was thought that where a new County was
8 being created, certainly the persons residing within that
9 area of the proposed new County should be given the
10 referendum choice. Similarly, where a change of County
11 boundaries was being contemplated, it was thought that
12 the persons within the area of proposed change should
13 be given a choice. Then, the choice of three or more,
14 that is more than three was determined upon by the Com-
15 mittee as requiring a referendum of the State at large
16 because it gave a measure of protection, but a measure of
17 built-in referendum rather than the permissive referen-
18 dum provided for generally in the Constitution, and
19 there would be three; and then further, the three ties
20 in with classification where at least three Counties will
21 be included in any one classification.

1 THE CHAIRMAN: Mrs. Bothe?

2 MRS. BOTHE: Did the Committee consider whether
3 it might not be advisable also to permit those in the
4 County to which another County or part of a County would
5 be annexed to participate in a decision as to whether
6 this should occur? I am referring now to the provision
7 that the majority of the voters to reside within the
8 area proposed to be transferred shall have to agree to
9 the transfer. What about those to whom they are being
10 attached?

11 MR. CLAGETT: Yes, that was considered, and
12 this does represent a compromise insofar as the thinking
13 of the Committee is concerned and was the choice made
14 by the Committee.

15 THE CHAIRMAN: Mr. Sykes?

16 MR. SYKES: Do you or do you not require the
17 concept of the majorities of the voters of the State
18 voting thereon within each County?

19 THE CHAIRMAN: The general referendum pro-
20 vision is what he is referring to there. No referendum
21 required under this Section.

1 MR. CLAGETT: Measure of built-in referendum.

2 MR. SYKES: What is the theory of requiring
3 where more than three but less than all do it, but not
4 requiring it when all of them are changed?

5 MR. CLAGETT: If the Legislature is going to
6 tamper with the change of boundary lines, then we want
7 a restriction. If it is going to do a clean sweep job,
8 we want them to have the degree of flexibility that
9 seems to be the whole design and purpose of a new Con-
10 stitution.

11 THE CHAIRMAN: I take it that one of the
12 thoughts you had in mind is if the Legislature wanted
13 to abolish all Counties and create five or ten larger
14 units, this would not require any referendum?

15 MR. CLAGETT: That is correct.

16 THE CHAIRMAN: Mr. Miller.

17 MR. MILLER: Suppose there is a change in four
18 Counties? Will that require two referendums? In other
19 words, do the people concerned have to approve it and
20 also the State as a whole approve it?

21 MR. CLAGETT: No, it would be the State as a

1 whole only.

2 MR. MILLER: Does it say that?

3 MR. CLAGETT: Yes, more than three, meaning
4 four, would require a vote of the State as a whole.

5 MR. MILLER: But it also says up there that
6 anything that changes the County line without the con-
7 sent of the majority of the voters therein residing.
8 That is the only reason I brought up the point. It looks
9 to me like it would require two referendums unless you
10 change the wording.

11 MR. SAYRE: The word contiguous.

12 THE CHAIRMAN: Just a second, Mr. Sayre.

13 Mr. Clagett, can you answer the question?

14 MR. CLAGETT: I think the word, contiguous,
15 gives you the answer.

16 MR. MILLER: Unfortunately, you don't get four
17 contiguous Counties, but each one might be bordering on
18 the other, and the word, contiguous, has a lot of legal
19 implications.

20 MR. CLAGETT: I think, too, as you follow the
21 sequence of thought expressed in each of the sentences,

1 I think that clarifies so that if the lines, if you are
2 going to change the lines and then how many Counties
3 are going to be affected, and then you get down to more
4 than three, I think that tends to clarify.

5 MR. MILLER: I understood what you meant, but
6 it might open up litigation. That is the only point.

7 THE CHAIRMAN: Mr. Clagett, it seems to me
8 that Mr. Miller's point is well taken, as I understand
9 it. He is suggesting that if you make a change in, say
10 Dorchester, Worcester and Wicomico, transferring some
11 of the land out of Wicomico to Dorchester and some to
12 Worcester -- you have to have a fourth County in there --
13 put Talbot in, would you then have to have a State wide
14 referendum and a local referendum for each of the Counties
15 losing territory?

16 MR. CLAGETT: No, the Committee in that
17 situation requires only a State wide referendum.

18 THE CHAIRMAN: But your second sentence would
19 seem to require also the referendum of the people in
20 Wicomico who are going to be transferred to Dorchester
21 or Worcester.

1 MR. CLAGETT: I think the second sentence, the
2 last sentence really indicates that more than three are
3 affected, and that would then require the referendum of
4 the State at large.

5 MR. MILLER: Wouldn't it also require the
6 consent of the other? That is the point I am trying to
7 clear up as to whether you have the consent.

8 MR. CLAGETT: That is not the intent of the
9 Committee.

10 MR. MILLER: I didn't think it was, so don't
11 you think you better change it?

12 MR. CLAGETT: If you refer back to the Fifth
13 Report, we had language there which did tend to clarify
14 it, and it read rather than of the voters residing within
15 the areas proposed to be transferred from one County to
16 another, and it was the thinking of the Commission at
17 that time that that was surplusage, and we were directed
18 to consider striking it out. Now, the thought is that
19 if there is any confusion, we could put those words back
20 in, and the sentence would then read, The lines of more
21 than three contiguous Counties but less than all the

1 Counties shall not be changed without the consent of a
2 majority of the voters of the State voting thereon rather
3 than of the voters residing within the area proposed to
4 be transferred from one County to the other.

5 Thus it would be clear that there would only
6 be the one referendum.

7 MR. MILLER: I think there ought to be some
8 clarifying language for this reason. I can picture
9 where you have a majority State wide for a referendum,
10 and somebody might bring a suit under this and say you
11 didn't get a majority of X-County.

12 THE CHAIRMAN: Mr. Sykes?

13 MR. SYKES: The real problem here from a
14 drafting point of view is that the last sentence is an
15 exception to the sentence that went before, and I think
16 that it can be very easily changed to accomplish without
17 awkwardness the point that Congressman Miller has in
18 mind. It would read, The lines of a County shall not be
19 changed without the consent of the majority of the voters
20 voting thereon who reside within the area proposed to be
21 transferred from one County to another, except the lines

1 of three contiguous Counties, may be changed with the
2 majority of the voters of the State voting thereon.

3 THE CHAIRMAN: May I suggest to you that you need
4 in connection with it another change, Mr. Clagett, and
5 that is something to indicate that what you are talking
6 about here is one bill, one act, one law changing the
7 lines of more than three contiguous Counties. You are
8 not talking about a situation where the Legislature in
9 one session may pass six bills, changing separately the
10 lines of six Counties, is that correct?

11 MR. CLAGETT: That is correct.

12 THE CHAIRMAN: So that, Mr. Sykes, maybe you
13 can doctor your language a little.

14 MR. SYKES: May be changed by a bill.

15 THE CHAIRMAN: The law is the expression we
16 are using.

17 MR. SYKES: By a law. By law, would mean --
18 law could be several, but a law --

19 MR. CLAGETT: I think the word, contiguous,
20 takes care of that.

21 MR. SYKES: No, they could do it by separate

1 bill.

2 THE CHAIRMAN: Mr. Hargrove?

3 MR. HARGROVE: Wouldn't that hold true also
4 for the first sentence because it seems to me if we are
5 just talking about the second and third sentences, you
6 would also have two referendums, possibly have two
7 referendums and the rest of it because conceivably if
8 you had four Counties consolidate into one, you would
9 have a similar situation, wouldn't you? If you created
10 a new County as opposed to the boundaries, wouldn't
11 that be true?

12 THE CHAIRMAN: I think this is true. I am
13 afraid this is a problem of drafting that we can't accom-
14 plish in this large a meeting. Is it the intent of the
15 Committee, and we can have the Commission decide if it
16 agrees with it, that the first two sentences of this
17 paragraph provide for situations where there shall be a
18 local referendum, but if a situation covered by the third
19 sentence is involved, you will have a State wide refer-
20 endum but no local referendum.

21 MR. CLAGETT: That is the intent of the Committee.

1 THE CHAIRMAN: And the third sentence contem-
2 plates a change involving the line of more than three con-
3 tiguous Counties by one law.

4 MR. CLAGETT: That is correct.

5 MR. SYKES: If that is the case, doesn't it
6 mean it is a restriction as to form only, which doesn't
7 mean very much, and the Legislature could circumvent it
8 by passing separate bills? It seems to me that any res-
9 triction in the Constitution ought to be a meaningful
10 restriction that can't be evaded by parliamentary hanky-
11 panky.

12 THE CHAIRMAN: I think the intent of the Com-
13 mittee, and you will have to amplify this, Mr. Clagett,
14 was that they were requiring the State wide referendum
15 not because the Legislature changed the lines of more
16 than three Counties, but because they were changing the
17 lines in one deal, one package, so to speak.

18 MR. SYKES: It is quite often that for par-
19 liamentary reasons essentially a single deal or package
20 is introduced into two, three or four bills, and I wonder
21 whether you are really reaching the policy question if you

1 limit it to a single bill.

2 THE CHAIRMAN: But if you did that separately
3 by separate bills under this concept of the Committee,
4 each would then be subject to a separate local referendum
5 of a different group of people, so it would be exceedingly
6 hazardous for one to accomplish or try to accomplish a
7 composite change by that manner. At least, that is my
8 understanding of the position of the Committee.

9 MR. CLAGETT: That is correct. Actually, the
10 Committee, or this represents a compromise of the think-
11 ing of the Committee which really had as its opposite
12 extremes no referendum whatsoever in order to give
13 complete flexibility insofar as boundary change and a
14 degree of flexibility in order to protect against such
15 inflexibility, and by reason of the desire to give expres-
16 sion to different factors that I think are clearly en-
17 compassed in the thinking of this Section, we arrived at
18 the restraint and the lack of restraint.

19 THE CHAIRMAN: Now, Mr. Miller.

20 MR. MILLER: I just wanted to insert a word of
21 warning to whoever rewords this. It just so happens I

1 have been poring through some decisions on contiguous.
2 Don't rely on it. When you get into the word, contiguous,
3 it is like Governor Lane's research on autonomous. It
4 can be construed more than one way and you are just
5 looking for a lawsuit, I am afraid. It doesn't neces-
6 sarily always mean what you and I think contiguous means.

7 THE CHAIRMAN: Mr. Della?

8 MR. CLAGETT: We had understood it to mean
9 adjoining, that means touching, in proximity.

10 MR. MILLER: That is what I thought it meant,
11 too, but there are cases that hold it to the general
12 neighborhood.

13 THE CHAIRMAN: Mr. Della?

14 MR. DELLA: Mr. Chairman, I have two questions,
15 one is, as I read this, it appears to me that, say for
16 instance, Prince Georges and Montgomery County, if they
17 decided to become one County, just the voters of those
18 two Counties could decide that they could dissolve their
19 lines and become one County. Now, at the same time, it
20 also raises a question.

21 THE CHAIRMAN: Are you stating that as your

1 understanding?

2 MR. DELLA: That is the way I understand it.

3 THE CHAIRMAN: That is not my understanding
4 of what the Committee intended.

5 MR. DELLA: No new County shall be created --

6 THE CHAIRMAN: The Legislature acts first.

7 MR. CLAGETT: The Counties are the creatures
8 of the Legislature. It would require an act of the Legis-
9 lature.

10 MR. DELLA: Creating one County instead of
11 two Counties, then the voters would vote on it, is that
12 right?

13 MR. CLAGETT: That is right, the voters of the
14 two Counties.

15 MR. DELLA: The second question would be,
16 supposing, for instance, there would be a group in Howard
17 County who would also along with Montgomery pass the same
18 similar bill, that they would be joined as one County,
19 and yet it would be less than a majority vote in Howard
20 County that would want to be absorbed by Montgomery
21 County. Would that take the whole complex of the vote

1 from Montgomery and Howard County combined?

2 MR. CLAGETT: It would be the voters voting
3 between the area of the proposed new County. Therefore,
4 it would include that portion of Howard, that portion of
5 Montgomery, and that portion of Prince Georges, and the
6 remaining portion of Howard, but not half of both.

7 MR. DELLA: I am not talking about Prince
8 Georges at all in this particular issue. You have two
9 County lines. You have Montgomery County and Howard
10 County, two separate Counties, and supposing the legis-
11 lators of these two Counties decided they would annex
12 or let Montgomery County absorb Howard County and make
13 one County out of it. If the Legislature passed this bill
14 as such and the voters would then act on it, would only
15 the voters of Howard County have the right to say that
16 they don't want to be annexed by Montgomery County, or
17 would the combined vote of Howard and Montgomery County
18 be the deciding factor?

19 MR. CLAGETT: It would be those voters within
20 the new County being created which would be the extended
21 lines, and therefore the voters within those extended

1 lines.

2 MR. DELLA: Then, Howard County could be
3 absorbed by Montgomery County even against the wishes
4 of the people in Howard County?

5 MR. CLAGETT: That is correct, because the
6 majority would be the total within the entire area.

7 THE CHAIRMAN: Mr. Sayre?

8 MR. SAYRE: Mr. Clagett, in regard to the
9 referendum, right now our existing referendum that the
10 Commission has acted upon allows for 5 per cent of the
11 voters that voted in the last gubernatorial election, is
12 that right?

13 MR. CLAGETT: That is right.

14 MR. SAYRE: This would require an addition
15 for the Legislature to be able to submit this to the
16 people, is that right?

17 MR. CLAGETT: Where less than all the Counties
18 were affected?

19 MR. SAYRE: Well, either way, in order to
20 effect any of these changes here, this would require an
21 additional provision in the referendum, would it not, to

1 bypass the petitioning aspect?

2 MR. CLAGETT: Yes. That would be a built-in
3 referendum protection.

4 THE CHAIRMAN: I don't follow you at all.
5 What provision would you talk about would bypass the
6 referendum?

7 MR. SAYRE: This assumes --

8 THE CHAIRMAN: What is this you are referring
9 to?

10 MR. SAYRE: This whole paragraph starting
11 with, No new County.

12 THE CHAIRMAN: Assumes what?

13 MR. SAYRE: Assumes that the Legislature
14 would submit to referendum or to the State as a whole any
15 of these changes.

16 THE CHAIRMAN: That does not bypass the
17 general referendum provision because of a bill that fell
18 within only the first sentence, and under the terms of
19 this provision be subject only to a local referendum, be
20 petitioned to a referendum on a State wide basis.

21 MR. SAYRE: The way this reads, it doesn't

1 say anything about petition.

2 THE CHAIRMAN: Because the general referendum
3 provision would cover it unless it is passed by -- well,
4 even then --

5 MR. SAYRE: How would this get proposed?

6 THE CHAIRMAN: The bill itself could not take
7 effect under the Constitution unless it were approved at
8 a referendum.

9 MR. SAYRE: And the referendum could not even
10 get to a position unless it had a petition?

11 THE CHAIRMAN: Certainly, it could. You would
12 be providing for it in the bill itself.

13 MR. SAYRE: According to the existing refer-
14 endum provision you have, you have to have a petition.

15 THE CHAIRMAN: This is a separate referendum.

16 MR. SAYRE: Does this bill end the referendum
17 provision, then?

18 MR. CLAGETT: In those cases, yes, in those
19 cases where it applies, it would be a built-in referendum,
20 and if the permissive referendum were also applied, it
21 would be two referendums, a State as a whole, and of the

1 affected area.

2 MR. SAYRE: I would suggest in the referendum
3 section something to the effect, except as provided in
4 this Section.

5 MR. CLAGETT: No, that isn't the thinking of
6 the Committee.

7 MR. MINDEL: Dr. Winslow distinguishes this
8 and calls it a compulsory referendum, and the other is
9 permissive.

10 MR. CLAGETT: That would be a correct charac-
11 terization.

12 MR. DELLA: I think this is setting up a pretty
13 bad proposition. For instance, Baltimore City, as I
14 understand it, can make a deal with the legislators of
15 Anne Arundel County who may not be concerned about
16 running any more, if they get paid off enough to do what
17 is necessary, and I am being practical, to get a bill
18 passed.

19 THE CHAIRMAN: Let me stop you right there.
20 When you say, legislators of Anne Arundel County, what
21 do you mean? Members of the Council?

1 MR. DELLA: Yes, the Anne Arundel County
2 delegation.

3 THE CHAIRMAN: It would have to be passed by
4 the Legislature, though, not just for those two Counties.

5 MR. DELLA: I recognize that, I recognize how
6 some of them operate, but I am using this as a supposi-
7 tion. If Baltimore City would want to take in Anne
8 Arundel County, which they wanted to do for a number of
9 years anyway, and they would get their legislation passed
10 and come to the voters for a decision, the voters in
11 Baltimore City are going to outweigh the voters in Anne
12 Arundel County by a vast majority.

13 THE CHAIRMAN: You are talking about taking
14 over the whole of Anne Arundel County?

15 MR. DELLA: There is nothing to prevent it.

16 THE CHAIRMAN: I know, but if it is anything
17 less than the whole of Anne Arundel County, then under
18 the second sentence Anne Arundel County voters could
19 veto it.

20 MR. CASE: It is only the voters who live in
21 the area to be transferred.

1 THE CHAIRMAN: That would be the Anne Arundel
2 County.

3 MR. CASE: I think there was some misinforma-
4 tion given out here when Mr. Della asked in the case he
5 proposed whether it would be the combined vote of every-
6 body or just the vote of the area to be transferred.

7 THE CHAIRMAN: I think it is a question of
8 doubt. Mr. Clagett answered the question on the basis
9 not that four-fifths of the County was added to the first
10 County, but that on the basis that two whole Counties
11 were put together. He read this then as the construction
12 of a new County.

13 MR. CLAGETT: That is correct.

14 THE CHAIRMAN: And that would come under the
15 first sentence as written, and it becomes very doubtful.
16 I don't think it is at all clear.

17 MR. CASE: No, none of it is, as a matter of
18 fact.

19 DR. BURDETTE: It seems to me the way this is
20 worded, if the Legislature provided that Anne Arundel
21 County would be a part of Baltimore City, herein called

1 the County, that the vote thereon would be as Mr. Della
2 suggested in the two combined -- well, I misstated myself.
3 If the transfer were made from Anne Arundel to Baltimore
4 City, that the vote would have to be in Anne Arundel,
5 because the perfectly obvious thing to do, just change
6 the name, then that is a new County, and that would
7 require by the wording of the language a majority in
8 the two parts of the new County which would permit
9 Baltimore City to determine that. Baltimore City would
10 have to change its name to do it.

11 THE CHAIRMAN: You draw a conclusion I don't
12 follow. The change of a County's name is not the creation
13 of a new County. If you change the name of Baltimore
14 City to something else, Patapsco Heights, I don't think
15 that would be the creation of a new City.

16 DR. BURDETTE: This would be a tremendous bit
17 of litigation.

18 THE CHAIRMAN: I quite agree. I wonder if the
19 Committee really cares about it, and if what you really
20 care about is simply that the lines of a County cannot
21 be changed without the consent of the majority of the

1 voters who reside within the area proposed to be trans-
2 ferred, regardless of whether this results in simply
3 adding to one County or creating a new County. I think
4 this becomes almost a distinction with a difference.

5 MR. CLAGETT: Not quite, because we really
6 anticipate two entirely different things here. If the
7 Legislature wants to create a new County by consolidating
8 two existing Counties into one, then the thought was that
9 there should be a degree of flexibility that would
10 permit that to be accomplished and using the example
11 that Mr. Della gave us of Baltimore City taking over and
12 Anne Arundel County, and then becoming one County, the
13 Committee's thinking is that we favor the consolidation
14 of Counties. We would like to avoid as much restriction
15 upon that process as possible.

16 Therefore, the majority resting in Baltimore
17 City and the majority wanting to acquire Anne Arundel, it
18 could be accomplished notwithstanding the objections of
19 Anne Arundel County. If it was going to take less than
20 all of Anne Arundel County, only a part of it, then we
21 felt that would be tampering with boundary lines, and we

1 wanted to avoid that kind of tampering. Therefore, those
2 persons within the area of Anne Arundel County to be
3 taken from Anne Arundel and moved to Baltimore County
4 would have a referendum choice.

5 THE CHAIRMAN: But it seems to me that you
6 get into awkward situations. Suppose you had a bill that
7 proposed that all of Baltimore County except the Fifth
8 District should be added to Baltimore City, and the Fifth
9 Election District of Baltimore County should be added
10 to Carroll County.

11 MR. CLAGETT: Then you have two entirely
12 separate situations, and that district would have a
13 choice.

14 THE CHAIRMAN: All was remaining a part of
15 the County. But then contrast that with a situation,
16 instead of doing that, the Legislature adds all of Balti-
17 more County to Baltimore City, then none of Baltimore
18 County has a choice.

19 MR. CLAGETT: The thinking of the Committee
20 was to favor consolidation, but to discourage tampering.

21 THE CHAIRMAN: Consolidation doesn't mean

1 all of one County to all of another. It would be just
2 as much a consolidation if you used the first example
3 I suggested, that all of Baltimore County except the
4 Fifth District be added to Baltimore City and the Fifth
5 District would be added to Carroll County.

6 MR. CASE: Just to put this into focus,
7 under the present Constitution, if two Counties are going
8 to consolidate, then you need an act of the General
9 Assembly consolidating and a majority vote in each of
10 the Counties before the consolidation can take place. Is
11 this not true?

12 MR. CLAGETT: That is correct.

13 MR. CASE: And this would change it to provide
14 not for a majority vote in each of the areas to be con-
15 solidated into one, but a majority of the entire area?

16 MR. CLAGETT: That is correct.

17 MR. SCANLAN: It looks to me like the Committee
18 wants to protect against petty larceny but not grand
19 larceny.

20 MR. CLAGETT: And that is entirely true.

21 MR. SAYRE: Mr. Chairman, I am aware of how

1 hard the Committee has struggled for this concept and the
2 drafting may draw it closer to the concept, but I ques-
3 tion the basic premise here of the manner in which you
4 mandatorily require referendum for these changes. Here
5 is the principle that is more logical, that it be per-
6 missive referendum submitted by the Legislature only, and
7 that if the Legislature did not submit any of the County
8 lines to referendum, you could still bring it up under
9 the other part of the referendum through petition to tie
10 the hands of the Legislature, and almost chance that it
11 may or may not pass. The way this is, it seems to me unwise
12 to allow one area of the State to vote down what the
13 whole State may benefit from. It seems to me capricious
14 to the general welfare of the State as a whole, and as
15 long as we don't prevent referendum from getting into the
16 picture which it could do through the petition right,
17 it would seem to me wiser not to have the referendum as
18 stipulated here.

19 THE CHAIRMAN: You would eliminate the entire
20 paragraph?

21 MR. SAYRE: Eliminate the entire paragraph

1 except as to the permissiveness of the Legislature decid-
2 ing whether or not to submit it to referendum.

3 THE CHAIRMAN: So you don't need anything on
4 that?

5 MR. SAYRE: Unless we do have it, the Legis-
6 lature cannot now do it, can they?

7 THE CHAIRMAN: Why not?

8 MR. SAYRE: Under the new proposed Constitu-
9 tion. The only Article we have is on petition.

10 THE CHAIRMAN. The Legislature can submit
11 a matter to referendum or pass a law. There certainly
12 isn't anything that says you can't in the existing
13 Consitution.

14 DR. WINSLOW: I thought there was a court
15 case on that that said they couldn't, a Legislature can-
16 not submit the matter to a referendum of the people of
17 the State.

18 THE CHAIRMAN: If there is, I am not familiar
19 with it. Certainly, unless I am very much wrong, there
20 have been bills that the Legislature has passed and sub-
21 mitted to referendum.

1 MR. SAYRE: Under the present Constitution,
2 but under our Section at present all we submit is a
3 petition. I mean, under our present draft, don't we
4 allow both ways?

5 THE CHAIRMAN: We don't say anything about
6 referendum except by petition.

7 MR. CASE: Mr. Chairman --

8 MR. CLAGETT: Mr. Chairman, I might suggest
9 the position of the Committee. We spent hours debating
10 the pros and cons, and you can still spend hours ending
11 up where you started from. The idea was to give the
12 General Assembly a degree of flexibility in order to
13 alter the boundaries of all the Counties, and if ultim-
14 ately the time comes that the Counties should be dissolved
15 and areas or regional redistricting are brought into
16 play, then the General Assembly should have that degree
17 of flexibility and be subject only to a State wide per-
18 missive referendum. But something short of that should
19 give to the areas that are affected a degree of protec-
20 tion, and this represents a compromise that was arrived
21 at with great, great difficulty; and I suggest that we

1 can go back and further consider it for clarification,
2 but I would suggest that this gives what we are trying
3 to do, namely, a degree of protection to the area affected
4 where it is less than whole reorganization.

5 THE CHAIRMAN: Mr. Case?

6 MR. CASE: Mr. Chairman, I am disturbed,
7 really, about the possibility of big Counties taking
8 smaller Counties over without an approval of the majority
9 of the voters in the County that is taken over. Now,
10 as I understand it, in all legal combinations except
11 this one that I ever heard about, the corporate situa-
12 tions, for example, where you either have a consolidation
13 or a merger, it is necessary before this can be made
14 legal, to have a percentage, usually two-thirds, but
15 certainly a majority of the vote of each of the entities
16 which are to be taken over.

17 Now this situation, though, departs from that
18 general principle and says in effect that if, that a
19 majority of the smaller units can be opposed to be taken
20 over and yet they can be swallowed up. If you keep mul-
21 tiplying this as Bob Martineau suggested to me a few

1 minutes ago, you can imagine where you get bigger and
2 bigger, and you can take over the whole State without
3 having the people who are taken over at all vote in
4 favor of it. As it gets bigger, all you need is a
5 majority. To put the thing in proper focus, I would move
6 that the paragraph that we are now discussing and appear-
7 ing on Page 2 be amended to provide that, whenever a new
8 County shall be proposed to be formed out of portions of
9 two or more Counties, the consent of the majority of the
10 legal voters of such part of each County or Counties
11 respectively shall be required.

12 MR. MARTINEAU: I second it.

13 THE CHAIRMAN: The consent, read that again,
14 the consent, what?

15 MR. CLAGETT: That puts us back where the
16 existing constitutional provision now stands, and the
17 Committee discussed this at quite some length and de-
18 cided against that, because it injects into the picture
19 a degree of too much inflexibility.

20 THE CHAIRMAN: I didn't get it. You are re-
21 quiring the vote of the part to be transferred or the

1 part where it is to be transferred?

2 MR. CASE: I will read the existing language:
3 And wherever a new County shall be proposed to be formed
4 out of portions --

5 MR. GENTRY: What Article?

6 MR. CASE: Article 13. -- out of portions
7 of two or more Counties, the concept of a majority of the
8 legal voters of such part of each of said Counties respec-
9 tively shall be required.

10 Now, that may not be worded quite with the
11 artistic desire that some of the Members of this Commis-
12 sion seem to desire, and I would certainly be willing to
13 go along with any of the word surgeons who care to doctor
14 this one up a little bit, but the idea is that you have
15 to have a majority in both the acquiring and acquired
16 area before you can have the combination.

17 THE CHAIRMAN: Is there a second?

18 MR. MARTINEAU: I seconded it.

19 MRS. BOTHE: Would this mean if the Legis-
20 lature should want to redistrict or re-County the lines
21 of the entire State that each of the Counties would have,

1 the majority of the voters in the County would have to
2 consent or the whole plan would fall?

3 MR. CLAGETT: That would be the logical text
4 of it.

5 MRS. BOTHE: It would be virtually impossible
6 if some little County desired to stay the way it was?

7 MR. CLAGETT: There, in clear focus, is the
8 problem of the Committee.

9 MR. CASE: I would suggest the State has been
10 in existence for a long time and nobody has tried to do
11 that yet.

12 MR. CLAGETT: And there have been no new
13 Counties since 1867.

14 MR. DELLA: The reason I raised the point I
15 did was because I am kind of hazy on this, because I was
16 quite young at the time, but when Baltimore City annexed
17 a part of Anne Arundel County, we took in Brooklyn and
18 around through Curtis Bay. The people in Anne Arundel
19 didn't want this, but it was some kind of arrangement
20 worked out with the County Commissioners and people in
21 authority which allowed this to happen. Since that time,

1 Baltimore City has annexed down towards Glen Burnie, but
2 other people have been able to block that, and this is
3 what I am fearful might happen again. They would start to
4 annex those portions which would be mostly beneficial
5 to them from a monetary point of view, and it would not be
6 the proper thing to do if the people objected to it.

7 MR. CASE: Following up what Mr. Della said
8 as a matter of history, I believe the present provision
9 in the Constitution was put in to make sure that this
10 would never happen again; that is to say, that people
11 would be annexed into a larger area without their consent,
12 and I am not sure of whether it was Anne Arundel County
13 or the annexation of Baltimore County which took everything
14 above North Avenue which was then Boundary Avenue, was
15 it not?

16 THE CHAIRMAN: That was way, way back.

17 DR. BARD: That was in 1888.

18 MR. CASE: That annexation was also made with-
19 out the consent of the people in Baltimore County.

20 MR. HARGROVE: That has been quite a number
21 of years ago, but isn't the reverse probably a real

1 possibility now? I would think that there is the pos-
2 sibility if you look at the tax structures in the urban
3 areas to try to move sections out into the County.

4 I mean, for example, the statute says Sixth District of
5 Baltimore City, which is adjoining Anne Arundel County
6 where the tax problem is a little low, it is possible
7 you can take a group of people there and vote them into
8 the City. How you can resolve this, I don't know. I
9 believe the same as Mr. Case, it has been in existence
10 for a long time, and I doubt if the General Assembly
11 would ever permit this to happen, but there is the pos-
12 sibility.

13 MR. CLAGETT: Mr. Chairman, I might point out
14 that once again you've got two referendums that are
15 possible here. You've got your mandatory referendum
16 which gives protection to the area which is being moved,
17 and you've got the permissive referendum which, if the
18 General Assembly acted in disregard of any particular
19 area, can be brought into play; and it would be up to the
20 State as a whole. So you've got a degree of protection
21 here, no matter which way it moves.

1 THE CHAIRMAN: May I suggest to you that the
2 debate on this, that I would hope that you would not resolve
3 the question which I think is exceedingly difficult on the
4 basis that we've gotten along for a long time with the
5 present Counties because this is at the very crux of the
6 problem that we are faced with now in solving the prob-
7 lems of metropolitan areas. There isn't any means now
8 available to create the kind of government that might
9 cope with it, and I think the whole question is an exceed-
10 ingly difficult one, and I don't think it can be re-
11 solved on the basis of anything except the present in
12 the foreseeable future.

13 Mr. Bond?

14 MR. BOND: I would just comment that one way
15 we can do both perhaps, is to go for these original
16 authorities and at the same time not tamper with the
17 Counties or the people within the Counties, and we may
18 be able to move forward using original authorities.

19 THE CHAIRMAN: Any further discussion?

20 Mr. Martineau?

21 MR. MARTINEAU: I would just like to say that

1 I am in favor of Mr. Case's motion because it seems to
2 me that if you can concede that with respect to moving
3 a part of a County to another County, the approval of
4 the people being transferred is necessary. It seems to
5 me the same principle should apply. This is assuming,
6 as the Committee has assumed, that you should have this
7 approval for the transfer of a part. I certainly think
8 the very same principle should apply, perhaps even more
9 so, of transferring an entire County from one, either
10 making it a part of another County or combining two
11 Counties and making a new County out of it that there is
12 no reason to distinguish between the two, assuming the
13 principle of referendum. For that reason, I think it
14 should be amended to include what Mr. Case, to include
15 the principle embodied in Mr. Case's motion.

16 THE CHAIRMAN: Any further discussion?

17 Mr. Brooks?

18 MR. BROOKS: Mr. Chairman, I would suggest
19 that the principle is and should be quite different from
20 that that the amendment is based upon in that we are
21 dealing here with political subdivisions. The County and

1 other political subdivisions are just that. They are
2 not entities of their own, but they are subdivisions of
3 the State that has been granted all the other powers of
4 the Federal Constitution. They are instruments of the
5 State and are not little autonomous governments here,
6 there, and yonder about the countryside. As a result,
7 these should serve the State and its government rather
8 than any particular people within any one existing County.
9 This week I had an opportunity to talk to both Dean Ford-
10 ham and Dr. Bebout at Rutgers University, and one thing
11 on the proposal that is before you that they both objected
12 to was the proposition set forth in here permitting a
13 referendum of the people to be transferred from one
14 area to another. They both feel and indicated that it
15 is the general political thought that today, if there is
16 to be any change of boundaries, if there is to be any
17 practical approach, it should be from the standpoint of
18 the State Legislature having total say without referendum
19 on the changes of boundaries. This is the only way to
20 make Counties or other political subdivisions in fact the
21 instrument of the State Government to serve the State

1 rather than to have any kind of referendum vote which
2 will always nullify the present existing arrangements.

3 DR. JENKINS: Mr. Chairman, I am very much
4 concerned by the question brought up by Mr. Hargrove,
5 and this has not been discussed, and that is who protects
6 the rest of the County when a particular area may wish
7 to secede. We may find situations throughout the State
8 where an affluent part of a subdivision may want to, for
9 various reasons, to go with another subdivision, thus
10 impoverishing the balance of the County. I think at
11 this moment I am in favor of a State referendum on such.
12 I am not certain of that, but I think I would like that
13 protection on any of these changes.

14 THE CHAIRMAN: Any further discussion?

15 DR. BARD: I just want to give an example of
16 the sort of thing that was just offered. Suppose some
17 suburban areas of Baltimore City decided that it would
18 be to their advantage to splinter off and become a part
19 of Baltimore County. How about the rest of the City?
20 Where would it be? The Inner City could then be left
21 with just the inner core itself after a while, and more

1 difficulties would be compounded because the Inner City
2 would have no positive voting on this segmentation.

3 THE CHAIRMAN: Any further discussion?

4 Mrs. Freedlander?

5 MRS. FREEDLANDER: In the light of the dis-
6 cussion, although I am a Member of the Committee on
7 Political Subdivisions, rather than have it be stricter,
8 I would be inclined to not use the second paragraph of
9 (b), but to end 11.01 at the first paragraph of (b),
10 which is on Page 1 of our Report, and which gives to the
11 General Assembly, which would be consistent with our
12 desire to strengthen the General Assembly and give the
13 State the power. The General Assembly may provide for,
14 and end our recommendation with the first paragraph of
15 (b).

16 THE CHAIRMAN: Any further discussion? I
17 would like to state my views before we take a vote, because
18 I think this is, if not the most important, certainly
19 one of the most important provisions that this Commission
20 will have to concern itself with.

21 Involved here is the whole notion of whether

1 you are going to give the Legislature the power to solve
2 the problem of urbanization in metropolitan government.
3 I don't think that is an exaggeration at all because if
4 the Legislature is not to have the power to change
5 County lines without having a referendum, not only of
6 the people who are being moved, but those in the area
7 into which they are being moved, it seems to me that it is
8 going to be impossible to give the Legislature the power
9 to create any kind of district or regional government
10 in time to cope with the metropolitan problems we are
11 facing today.

12 Yet it seems to me that these must be solved.
13 Certainly, we are in the situation today where you just
14 cannot possibly solve problems of transportation and
15 zoning and land use and sewers and such in this tremen-
16 dous swath of urban community that will extend from the
17 Pennsylvania line unless the Legislature has the power
18 not to ask the political subdivisions how they want to
19 handle it, but to decide how it is going to handle it.
20 This gives the Legislature a tremendous amount of power,
21 but it seems to me anything less is simply not going

1 to accomplish the purpose. I recognize that there are
2 political considerations here involved, and that the
3 traditions, the sensitiveness of people, their pride in
4 their home County and also in many, many respects, their
5 pocketbooks, which is perhaps even more important, are
6 going to resist the idea that the Legislature can affect
7 them without their consent. I personally have gotten
8 myself over the hurdle that I would prefer to see the
9 entire second paragraph of (b) eliminated, but at the
10 very least, I think the mandatory referendum that we
11 billed in must be a very minimum, and I think the pro-
12 vision suggested by this motion would simply tie the
13 hand of the Legislature.

14 Anything further?

15 DR. JENKINS: May I ask a question? I think
16 I am convinced by your statement that the, just the
17 areas concerned should vote on this question. Will you
18 address yourself to the, as to why the people of the
19 State should not vote on this as a check on manipulations
20 or possible manipulations within the General Assembly?

21 THE CHAIRMAN: You have the right by the

1 permissive referendum for people to speak so that if the
2 Legislature gets completely out of hand as it may well
3 do, I mean, we have to face up to the fact that you are
4 going to have a Legislature that is going to be dominated
5 perhaps by large urban areas, and they are going to be
6 human, and they are going to perhaps be inclined to take
7 steps which are for the best interests of their own
8 areas; but I think the check, the one check you have was the
9 State wide referendum, that is permitted under the refer-
10 endum provision.

11 DR. JENKINS: Unless this is passed as an
12 emergency act.

13 THE CHAIRMAN: Even then it is subject to the
14 referendum. The only difference is if it, it goes into
15 effect, but I don't believe this need concern you. I
16 realize and I am not suggesting that this is an area
17 where it is black and white and the decision is easy. I
18 think this is one of the most crucial decisions of all,
19 but on balance, it ought to be, the Legislature subject to
20 check by the State wide referendum. I would hate to
21 see a situation where the solution of the Baltimore

1 metropolitan area could be hamstrung by the decisions
2 and necessarily the selfish decisions of any voters in
3 any particular segment of the Baltimore metropolitan
4 district.

5 I hope the problem can be solved on a State
6 wide basis on what is best for the State. I am fully
7 aware of the jealousies, maybe that is the wrong word,
8 of the incompatibility to a degree between Prince Georges
9 and Montgomery Counties, and I think it would be most
10 unfortunate to have the vital interest of the State in
11 the Washington suburban area become the subject of a
12 tussle between those two very substantially populated
13 areas, and it seems to me that this kind of provision
14 does precisely that. We are saying that the State can't
15 solve the Washington problem area, that the Counties have
16 to. This troubles me. I didn't mean to make a speech,
17 but I think this is a tremendously important matter.

18 Mr. Sayre?

19 MR. SAYRE: Mr. Chairman, I would like to
20 supersede the prior amendment with a substitute motion,
21 The General Assembly may provide by law for organizing

1 new Counties, locating and moving County seats and moving
2 County lines -- the General Assembly may submit to State
3 wide referendum the proposed change. The referendum
4 may also be submitted as provided by Article, whatever
5 the Article is on the petition.

6 THE CHAIRMAN: Mr. Sayre, it seems to me that
7 embraces three or more different thoughts. This, it
8 seems to me embraces three or four different ideas.
9 Why, for instance, do you care about the question whether
10 the Legislature cares where the County seat is?

11 MR. SAYRE: I will be happy to strike that out.

12 THE CHAIRMAN: Give us the substance of your
13 substitute motion.

14 MR. SAYRE: The General Assembly may provide by
15 law for organizing new Counties and changing County lines.
16 The General Assembly may submit to State wide referendum
17 the proposed change. The referendum may also be sub-
18 mitted as provided by Article, whatever the Article is
19 we have embodied in our draft.

20 THE CHAIRMAN: The first part of your proposal
21 is the first sentence of Paragraph (b). Is there a second?

1 MR. BOND: I will second.

2 THE CHAIRMAN: Mr. Scanlan, do you want to
3 speak to the motion?

4 MR. SCANLAN: Me?

5 THE CHAIRMAN: This is a motion to substitute
6 for the pending motion a proposal made by Mr. Sayre.

7 MR. CLAGETT: You said Mr. Scanlan; did you
8 mean me?

9 THE CHAIRMAN: I am sorry; yes, Mr. Clagett.

10 MR. SAYRE: I would like to say that the
11 simpler we have the manner in which the General Assembly
12 can change the internal structure of the State, I think
13 the better it would be for the welfare of all of the
14 State, and if we allow the judgment of the Legislature
15 to determine whether or not it wishes to submit the
16 question to referendum, that would be the judgment of
17 the Legislature. It does not prevent under our other
18 Article the people petitioning through State wide refer-
19 endum.

20 We should not make this subject to the locality
21 involved, and those are the principles involved in this

1 substitute motion.

2 THE CHAIRMAN: Mr. Clagett?

3 MR. CLAGETT: It boils down to a matter of
4 philosophy, and here the Committee has tried to recon-
5 cile a degree of protection for the area beind immediately
6 and directly affected where less than all of the
7 Counties are involved, but yet leaving to the Legisla-
8 ture a degree of flexibility, and if I keep on using
9 those words, I think you will come to appreciate what
10 they really mean -- to meet the problems of urban
11 development and the ultimate necessity of realigning
12 local subdivisions when and if that day comes. Therefore,
13 since this proposal does not take into consideration the
14 compromise that was reached by the Committee after
15 extended debate, I would have to oppose it and to ask
16 that we retain what we have accomplished here.

17 THE CHAIRMAN: Any further discussion?

18 DR. JENKINS: May I ask Mr. Clagett the same
19 question I have you? There is no protection here for
20 the wife who is being deserted.

21 MR. CLAGETT: There is protection here. If

1 you analyze it carefully, let's take the first Section
2 where one County is absorbing another County as a whole.
3 Now, this is all taking place in the General Assembly,
4 and where, let us assume now for the example and clarity,
5 Mr. Della's situation, where Baltimore City is absorbing
6 Anne Arundel County. The delegates in Anne Arundel
7 County have an appeal to the Assembly at large for per-
8 missive referendum. The Assembly at large, that is
9 number 1, because it is going to require a majority vote
10 of that General Assembly. After that bill passes, the
11 Anne Arundel delegates can marshal the necessary percent-
12 age to put that bill to a general referendum of the State
13 at large. Assuming now that the bill passes, the bill
14 will have to contain a referendum built in protecting
15 the area which is being created which will be Baltimore
16 County and Anne Arundel County, the new County. Now,
17 where less than a new County is being created, you have
18 an even greater protection because the built-in referen-
19 dum which would then be allowed would be that of the
20 particular area which was being moved. So I think we've
21 got here a compromise of protection for the areas and the

1 new --

2 DR. JENKINS: Excuse me, Hal, you say about
3 the portion being moved. But what about that portion
4 that is not being moved?

5 MR. CLAGETT: Either a part of the State
6 as a whole, and if they are that much affected, they
7 can exercise their voice in the State wide referendum.
8 Again, remember, this is a compromise, and you can really
9 find -- well, we came up with four separate possibilities
10 and you can get into about twelve.

11 THE CHAIRMAN: Mrs. Bothe?

12 MRS. BOTHE: It seems to me there is really
13 no way to have a referendum that would be effective,
14 that is, a compromise referendum that has a place in the
15 second paragraph. I don't think there is any means of
16 providing for a referendum that is going to carry out the
17 purpose. Either you are going to have the Legislature
18 with a free hand subject to the permissive referendum,
19 or you are going to have a situation where the County,
20 the people involved themselves are going to have to
21 determine whether they are going to be moved, which means,

1 I think, we will never have any new Counties, and I think
2 the Commission is going to have to decide which prin-
3 ciple is more important rather than fool around with how
4 we can have a referendum that is fair, because I know
5 the Committee has spent hours on this, and apparently
6 hasn't come up with one, and I don't really see where a
7 proper referendum, built-in referendum, could be for-
8 mulated.

9 THE CHAIRMAN: Mr. Haile?

10 MR. HAILE: I would like to point out that
11 Counties are older than the States or the cities, and
12 these waters run deep; and just eighteen years ago there
13 was an amendment to the Constitution preventing large
14 areas from gobbling up small Counties which passed the
15 referendum. I think that we should continue that and
16 resort to regional governments as we are proposing in
17 later legislation, and let the old Counties with their
18 school systems and judicial circuits stay as they are.
19 That I would like to point out to the Commission.

20 THE CHAIRMAN: Mr. Gentry?

21 MR. GENTRY: Could a State wide realignment

1 of the Counties be passed by the Legislature under the
2 label of a reapportionment, and thereby be exempted from
3 the referendum?

4 THE CHAIRMAN: You mean under this proposal?

5 MR. GENTRY: Yes, I am asking.

6 THE CHAIRMAN: I wouldn't think so.

7 MR. CLAGETT: I don't think you could, under
8 that.

9 MR. BOND: I would like to ask the Chairman
10 of the Committee. We all know these many problems that
11 are coming down as a result of our urbanization.
12 Couldn't most of these problems in the Committee's view-
13 point, what is the Committee's viewpoint as to using
14 regional government, intergovernmental authority to
15 solve these problems? Do you have any statement of the
16 Committee as to whether this couldn't solve the problems
17 and at the same time retain the old County governments?

18 MR. CLAGETT: Yes, that puts us into a new
19 and different phase of our consideration.

20 MR. BOND: I think it goes to Mr. Sayre's
21 motion to this extent, sir. He proposed that we, that

1 we adopt this annexation provision subject to a general
2 referendum and to my thinking, depending on your answer
3 here, it could be important as to how to vote on this
4 question.

5 MR. CLAGETT: There are two factors that are
6 involved. One is whether you are going to have a
7 regional authority or whether you are going to have a
8 regional government. Now, they are two internally dif-
9 ferent concepts, and they are inconsistent one with the
10 other. Where you provide for a regional government,
11 then you prohibit regional authorities, and where you
12 have a regional government, you have a representative
13 form of government between the County level and the State
14 level. Now, the Committee debated that problem four
15 separate nights, and we had before you, which you will
16 consider before we get through, an alternate approach
17 which does provide for a regional government. The Com-
18 mittee as a whole has adopted that as an alternative
19 rather than, as you will later see after you have con-
20 sidered the four corners of the proposal, of the majority
21 here. I don't believe that it does represent the answer,

1 but I do think that the built-in flexibility and inflexi-
2 bility of the proposal here does not make it impossible
3 but would make it more possible.

4 THE CHAIRMAN: Anything further? The question
5 arises on the motion to substitute for the pending
6 motion the direction to the Committee to rewrite the
7 second paragraph of Paragraph (b) of Section 11.01 so
8 as to in substance authorize or provide that the General
9 Assembly may provide by law to authorize new Counties
10 and changing the County lines and may submit such act
11 to a State wide referendum. The pending motion is to
12 rewrite the paragraph to provide, in effect, that any
13 change in County lines, transfer of an area from one
14 County to another, cannot be accomplished except with
15 the consent of the majority of the votes in the area to
16 be transferred and in the area to which it is to be
17 transferred. This does not embrace it, as I understand
18 it, the consent of the area from which it is being
19 transferred. Are you ready for the question?

20 MR. SCANLAN: Is this on Mr. Sayre's motion?

21 THE CHAIRMAN: Mr. Sayre's motion to substitute.

1 This is not a vote on his motion but merely on the ques-
2 tion of whether to substitute.

3 Ready for the question? All those in favor of
4 substituting the motion for the pending motion will
5 signify by a show of hands. Contrary? The motion is
6 lost, 6 to 16. The question now arises on the motion by
7 Mr. Case to rewrite the second paragraph of Paragraph (b)
8 so as to provide in substance that County lines may be
9 changed by the Legislature only subject to the approval
10 of the majority of the voters in the area being trans-
11 ferred to another County and in the County to which such
12 area is being transferred.

13 MR. SYKES: Point of order. If this motion,
14 should it pass, would it or would it not be in order
15 afterwards, would a motion be in order to delete the
16 entire second paragraph of Subsection (b)?

17 THE CHAIRMAN: Well, I would think it would be
18 inconsistent with the purpose of it. If you wanted to
19 delete the paragraph, I would suggest that the procedure
20 would be to vote against the pending motion and then a
21 motion to delete the paragraph, which would then be

1 before you would certainly be in order. The pending
2 motion is, in effect, to delete the paragraph and put
3 something else in place of it.

4 Dr. Bard?

5 DR. BARD: Would the maker of the motion be
6 willing to accept this addition, as well as the consent
7 of a majority of the voters from which the disjointed
8 section comes? Now, that may not be legal category,
9 but it gets at the heart of what troubles me,, if by
10 way of illustration there should be segmentation from the
11 outer rim of Baltimore City and the City finds itself
12 in great difficulty because the inner portion is alone.

13 THE CHAIRMAN: Mr. Case?

14 MR. CASE: No, Mr. Chairman, I wouldn't accept
15 that, because it goes to a different point than the
16 point that my motion seeks to make. It is entirely
17 different.

18 THE CHAIRMAN: Any further discussion?

19 Mr. Sykes?

20 MR. SYKES: I would just like to say that this
21 motion, if it passes, it seems to me that you can throw

1 away, you are throwing away any opportunity of solving the
2 basic problem which is the main reason why we are grappling
3 with a new Constitution today. If Justice Holmes was
4 right in saying that the Constitution of the United
5 States doesn't enact Herbert Spencer's social status, it
6 seems to me that it is indisputable that we make a big
7 mistake if we deliberately enact into the Constitution
8 the very kind of parochialism which is strangling our
9 government today, and if you take the biggest problem
10 that we have and say, We won't give you the tools to
11 solve it, and we will insure that you can't solve it,
12 then we have been tinkering pretty uselessly and spend-
13 ing an awful lot of time over refinements in other
14 matters that would be rendered completely superfluous
15 and meaningless.

16 THE CHAIRMAN: Mr. Martineau?

17 MR. MARTINEAU: I would like to disagree with
18 what you said before about voting for this being incon-
19 sistent with voting in favor of the deletion of the
20 second paragraph? I am in favor of this motion as I stated
21 originally on the basis that if you are going to have a

1 referendum, it is inconsistent not to extend the refer-
2 endum to the area under consideration. I think the
3 matter is completely different. If you are going to talk
4 about taking away the referendum completely and only
5 leaving in the first paragraph of (b) --

6 MR. SYKES: Mr. Chairman --

7 THE CHAIRMAN: In order to avoid any possible
8 conflict, let's say this. As I understand Mr. Case's
9 motion, it is to amend the second paragraph of Paragraph
10 (b) so as to provide that there must be consent by
11 referendum of a majority of the voters in the area to
12 be transferred from the County as well as in the majority
13 of the voters in the County which the area is being
14 transferred. If the motion passes, then I would rule
15 that this paragraph is still before the Commission in its
16 amended form for whatever action the Commission may
17 want to take. Is that clear to everybody?

18 Mr. Bond?

19 MR. BOND: I would like to comment on this
20 motion. I agree with Mr. Sykes. We have to have the tools
21 to solve the problems which are coming, but no one has said

1 to me that we can't still have the tools through inter-
2 regional governments and intergovernmental authorities,
3 and still continue the safeguards that the present Con-
4 stitution gives to the people.

5 MR. CLAGETT: Mr. Chairman, I want it to be
6 clear that if the motion fails, consideration of the
7 thought of Mr. Sykes that the whole paragraph can be
8 deleted will still equally remain open for consideration.

9 THE CHAIRMAN: Essentially the paragraph will
10 still be before the Commission, either in its present
11 or amended form.

12 MR. DELLA: I think there is another way to
13 reach the solution to the problem which we are trying
14 to solve. I am not sure of the mechanics, but I know
15 New Jersey, for instance, has one County adjoining the
16 other with boroughs and everything else interlocking.
17 You have people living on one side of the street who
18 live in one County, and the others live in another.
19 The water, transportation, and everything else is handled
20 by one authority. I don't see why something can't be
21 worked out here.

1 THE CHAIRMAN: Any further discussion?

2 Dr. Burdette?

3 DR. BURDETTE: Would you care to say where
4 Mr. Case's language goes in and what the words are?

5 THE CHAIRMAN: He has not proposed any precise
6 language, but a principle. The principal embodied in
7 this paragraph is that where the lines of a County are
8 changed and an area is transferred from one County to
9 another, that that can be accomplished only with the
10 consent of a majority of the voters residing in the area
11 to be transferred. He proposes that in addition, you
12 require the consent of the majority of the voters of the
13 County to which the area is to be transferred. It is an
14 added provision.

15 JUDGE ADKINS: I call the question, Mr. Chair-
16 man.

17 THE CHAIRMAN: Mr. Case?

18 MR. CASE: Mr. Chairman and Members of the Com-
19 mission, my purpose for offering this motion has been
20 served in one sense because I wanted, I thought we should
21 have a full discussion of the very important principle,

1 and as usual, this expectation was fulfilled. I would
2 like to call your attention to the fact that one of the
3 reasons I think the motion is a sound one is that it is
4 consistent with the provisions of what you have in here
5 with reference to a part of a County where a part of a
6 County is transferred, then the affected part has the
7 right to vote, whereas if the whole County is combined
8 with another whole County, the smaller of the two, the
9 one which is merged into, let us say, the larger, has
10 no right to vote. This to me is just incongruous, and
11 it just can't be reconciled on any degree of logic. The
12 motion should carry for that reason. Secondly, I have
13 had some experience in working with inter-County author-
14 ities in this State, and I have heard the question
15 raised two or three times whether or not authorities
16 could accomplish the purpose. In terms of specifics,
17 there is no question about the fact they can, and by
18 that I mean, for example, the Washington Suburban
19 Sanitary Commission has been the agency which has developed
20 water, sewer, trash collection facilities in the Washing-
21 ton metropolitan area. By and large, it has worked quite

1 well. The National Capital Park and Planning Commission
2 equally is somewhat the same kind of a bi-County
3 authority which works quite well in the area of planning
4 and so on. The General Assembly has also provided
5 and there have been established by law a number of sani-
6 tary districts which in some cases can, which in all
7 cases can be bi- or tri-County and there have been
8 cooperation with the sanitary districts in a bi-County
9 area.

10 I think it is clear that Counties can cooperate
11 one with another without being or having the require-
12 ment that the smaller County be swallowed up by a larger
13 one through merger with no right of the fish that is
14 being swallowed to vote Yes or No. I feel in keeping
15 with, and not because this is the way it has always been
16 done, but because I sometimes fear the tyranny of a
17 majority, and I think we should provide that the minority
18 in this area should have a right to voice its opposition.

19 MR. CLAGETT: Mr. Chairman, I want to point up
20 before the vote is taken that in the proposal of the
21 Committee as you have it in front of you, you see a

1 compromise between the two points of view, the degree
2 of inflexibility suggested by Mr. Case and the degree
3 of unlimited flexibility suggested by Mr. Sykes, and
4 here you have a compromise in between the two points
5 of view. Now, I do suggest to you, this: The whole
6 emphasis in our constitutional deliberations has been
7 to revitalize and place the Legislature in its proper
8 sphere of responsibility. If that is true, no big
9 County is going to be able to swallow up any small County
10 without having the approval of that Legislature, and that
11 Legislature is going to be interested in protecting
12 the policy of the State as a whole, and not to yield
13 to the ambitions of a large County to swallow up a
14 small County. For that reason, I would hope that the
15 motion would fail and since the counter, the opposite
16 view will later be voted upon, that also would fail,
17 and the compromise either adopted --

18 JUDGE ADKINS: I would like to ask Mr. Clagett
19 the question of who would protect the small County after
20 the 1970 census when it is perfectly clear there will be
21 small Counties in this State who have no voice in the

1 Legislature. They have no voice in the Legislature, not
2 right of referendum, who is going to speak for that
3 County which is being swallowed up, assuming such a
4 condition will exist, and I can quote you instances where
5 it might. What are they going to do -- rely on the
6 general equity of the situation?

7 MR. CLAGETT: Assuming the General Assembly
8 does mett its responsibility of general policy, the
9 answer is Yes, and rightfully rely upon it.

10 JUDGE ADKINS: That is an assumption I am
11 not prepared to make.

12 MR. CASE: I call the question.

13 THE CHAIRMAN: All in favor, or let me state
14 again the question. The question arises on the motion
15 to amend the second paragraph of Paragraph (b) by pro-
16 viding that when the lines of the County are changed by
17 an act of the Legislature, it shall be by referendum
18 the consent of the majority of the voters residing in the
19 area transferred to the other County and a majority of the
20 voters in the County to which such area is transferred.
21 In either event, regardless of how the vote goes on this,

1 the Section, either in its present form or as amended,
2 will be before the Commission.

3 MR. CASE: That is not my motion.

4 MR. HOFF: It went beyond that. For the
5 whole County.

6 MR. CASE: Where a new County is formed by
7 the combination of two existing Counties, then it requires
8 the vote of a majority of the people in the County taking
9 over, and the County swallowing up.

10 THE CHAIRMAN: That is covered by the first
11 sentence.

12 MR. CASE: No, it isn't.

13 MR. CLAGETT: The difference is, it would
14 be the composite --

15 THE CHAIRMAN: Wait a minute. Let me under-
16 stand the motion. I have been stating it for the past
17 half hour. You are talking about a change in the lines
18 of a County, whether or not it results in the creation
19 of a whole new County.

20 MR. CASE: No, the way the first sentence
21 reads now is, where a new County is created, then out of

1 two existing Counties, then the referendum goes to a
2 majority of the total people in both Counties. That
3 is what it says now. I say that it should be, a majority
4 of the people in each of the Counties involved --

5 MR. SCANLAN: Concurrent majorities?

6 MR. CASE: That is right. To that extent,
7 I have offered a limited amendment to the first sentence.

8 THE CHAIRMAN: I didn't understand your motion
9 then. The way I read the first sentence is that if you
10 create a new County out of part of two existing Counties,
11 the referendum required is that of the people within
12 the new County, that is of the part transferred. It
13 does not require the consent of the remaining part of the
14 old County as written.

15 MR. CASE: As I read it, it requires a
16 majority of the new area to be formed.

17 THE CHAIRMAN: That is right.

18 MR. CASE: My motion says that it requires the
19 concurrent majority of the areas being combined.

20 MR. CLAGETT: You are both talking about the
21 same thing, but let's reduce it to A, B, and C.

1 MR. SAYRE: You are not talking about that,
2 are you?

3 THE CHAIRMAN: If we get a third party in
4 this discussion, I will never get it straight.

5 MR. CLAGETT: Think of the problems I have.

6 THE CHAIRMAN: Mr. Case, is your motion directed
7 at all to the change in the lines of a County, that is
8 transferring a part of one County to another County?

9 MR. CASE: No.

10 MR. CLAGETT: He is not talking about that.

11 MR. CASE: That is already provided for in
12 here.

13 THE CHAIRMAN: It is not provided in here.
14 It provides only for the vote of the people in the area
15 being transferred.

16 MR. CASE: That is right, and I buy this.

17 THE CHAIRMAN: Let me suggest that we adjourn
18 for dinner.

19 MR. CASE: I will straighten it out.

20 (Whereupon the meeting adjourned, to reconvene
21 at 7:30 p.m. of the same day.)

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CONSTITUTIONAL CONVENTION COMMISSION

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EVENING SESSION

October 24, 1966 - 7:30 p.m.

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Brown Estate, Port Deposit, Maryland

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Appearances as heretofore noted.

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Reported by:
N. F. Swetland

21

1 THE CHAIRMAN: Can we come to order, please?
2 We have devoted several hours to a discussion of one
3 Section only of the Report of the Committee on Political
4 Subdivisions. Important as is the subject and fundamen-
5 tal as the questions being discussed are, we can't make
6 any progress this way. I think perhaps I was in error
7 in suggesting that we take up each Section, discuss and
8 debate it as we go along. Therefore, in the absence of
9 objections, I would like to hold the pending motion
10 without action and ask Mr. Clagett to run through fairly
11 quickly a review of the entire Article suggested by them
12 because I think in the long run this maybe will shorten
13 the discussion, because it will highlight some of the
14 difficult decisions that the Committee has faced.

15 We will have to discuss the various proposals
16 as we go along, and I don't mean to suggest merely a
17 running review of the existing Sections without any ques-
18 tions, but suggest merely that we have full discussion
19 but not make any motions concerning the policy questions
20 embodied in these various Sections until we have been
21 through the whole Article, and then come back, and then

1 we will pick up the motion that is pending before us and
2 move on from there. Is there any objection to that
3 procedure? If not, Mr. Clagett, I think you have perhaps
4 covered sufficiently the second paragraph of Section
5 11.01 (b), but I don't think you have covered it suf-
6 ficiently as desirable perhaps as the first paragraph
7 of 11.01(b). Could you pick up there, and then run
8 through the rest of the Article?

9 MR. CLAGETT: Mr. Chairman, I am going to ad-
10 here to what you have requested that I do primarily by
11 reading what we have proposed as the local government
12 the of/Article. Rather than try to diverge too much from the
13 actual language and give an explanation because I think
14 actually as we consider the actual language in front of
15 us, the explanation will be built in rather than accept-
16 ing my explanation, and then going back to the language.

17 THE CHAIRMAN: Well, I would suggest that you
18 permit questions with respect to each paragraph, but just
19 hold back on the motion.

20 MR. CLAGETT: With respect to Subsection (b)
21 which I have already read, I want to point out that the

1 General Assembly here, may provide, rather than, shall
2 provide by law for the creation of Counties and other
3 civil divisions.

4 Now, omitted here is any reference to cities,
5 but we move on further and define civil divisions as
6 including regional governments and intergovernmental
7 authority. Now, this is a consolidation of several Sec-
8 tions, and the recommendation of the Commission at the
9 first presentation back on September 20, so that by this
10 Section the General Assembly is creating Counties and
11 civil divisions which will include regional governments
12 and intergovernmental authorities but excluding municipal
13 corporations; and I think in terms of municipal corpora-
14 tions as defined up in Subsection (a), meaning incor-
15 porated cities, towns or villages.

16 The General Assembly shall also provide for
17 methods and procedures of creating, incorporating chang-
18 ing, merging and dissolving Counties and other civil
19 divisions and altering their boundaries. Then we go
20 ahead and with respect to the altering of boundaries,
21 take care of the situation where a new County is created

1 or the lines of a County are changed or all of the
2 lines of Counties are dissolved, and a completely re-
3 arranged effort is attempted by the General Assembly.

4 MR. SCANLAN: Did you mean the second paragraph
5 (b) to be the second paragraph or a Subsection of (c),
6 beginning on the top of Page 2? As it stands now, it is
7 the second paragraph of your --

8 MR. CLAGETT: The second Subsection of Para-
9 graph (b). I don't mean it to be a Subsection of Para-
10 graph (c) because there we are dealing with the last
11 phrase of Subsection (b) as it appears on Page 1, alter-
12 ing of boundaries; and then we try to compromise a
13 degree of flexibility insofar as changing is concerned
14 with a degree of inflexibility to maintain rather than
15 have promiscuous change.

16 THE CHAIRMAN: Just a second. Mr. Hoff has
17 a question.

18 MR. HOFF: Could I inquire about the reasoning
19 of the Committee as to the right to foreclose the right
20 of the Legislature to leave that entirely up to the
21 County which I think would, in effect, prohibit the

1 formation of any new municipal corporation.

2 MR. CLAGETT: That puts squarely in focus
3 the good purpose that can be served by looking over the
4 four corners of our proposed Article here because the
5 very next Section and Subsection brings the answer, and
6 I go on to read Section 11.02, Powers of Counties and
7 Other Civil Divisions.

8 Subsection (a). A County may exercise any
9 power or perform any function which is not denied to
10 it by its charter or by law which in its terms and in its
11 effects is applicable to all Counties or to all Counties
12 of its class, and which has not been transferred to
13 another civil division.

14 Now, the reason why I say this is your answer,
15 the Committee, after extended debate and I say that in
16 the light of months rather than just one or two meetings,
17 debated the fundamental approach of a broad grant of
18 power to the Counties provided for in the Constitution
19 or a grant of power to the Counties from the General
20 Assembly. In other words, constitutional in source or
21 legislative or statutory in source, and we finally determined

1 upon the approach of a broad grant of power to the
2 Counties emanating from the Constitution. Now, if that
3 is going to be our approach consistent with that,
4 must be the County and the relationship of it with the
5 cities because the cities are within the geographical
6 boundaries of the County. You can't have two separate
7 and distinct autonomous areas. You've got to have the
8 two with one having some degree of control and direction
9 over the other. It has been the decision and is the
10 recommendation of the Committee that the County shall
11 make provision for the creation of new cities rather
12 than having a potential built-in conflict between
13 the County and the City if the County has a broad grant
14 of power, and the City has a broad grant of power, one
15 from the Constitution and the other from statute.

16 MR. SCANLAN: I don't see how you answered
17 Senator Hoff's question.

18 THE CHAIRMAN: I think if you will hold the
19 rest of the questions until we get to 11.04, it may be
20 a little clearer.

21 MRS. BOTHE: Can I ask a question?

1 THE CHAIRMAN: Go ahead.

2 MRS. BOTHE: With regard to Section (a),
3 do I understand from the proposed wording of Section (a)
4 of 11.02 that the Committee has adopted the language
5 that was so much debated from the last Report in which
6 they define the ability of Counties and other civil
7 divisions to make laws.

8 MR. CLAGETT: Yes, we have, and the reason
9 why we did drop the attempt to define the restrictions
10 is that we felt that that was the responsibility of the
11 General Assembly; and when the time comes to withdraw
12 powers from this broad grant, then the General Assembly
13 would have to define what powers are to be withdrawn
14 rather than attempting to write in those restrictions
15 into the Constitution.

16 So after debating that, we decided to leave
17 it out entirely.

18 THE CHAIRMAN: Mr. Mindel?

19 MR. MINDEL: I would like to ask you, how did
20 you arrive at the term, civil divisions? Did you
21 define this later on?

1 MR. CLAGETT: One of our earlier drafts
2 provided that the General Assembly shall provide by law
3 for Counties, cities, or other civil divisions thus
4 mandating Counties and cities and giving a degree of
5 flexibility for the future in the phrase, civil divisions.
6 It does; by civil division is meant any form of government
7 or governmental structure that the General Assembly might
8 come up with to take care of the needs of the future.
9 We only included at that point towns and villages, and
10 then it was broadened by discussion later to include
11 regional governments, and then there was some question
12 about whether or not, I think it was Mel Sykes who
13 brought up the question of whether an intergovernmental
14 authority was an agency or a civil division. We want it
15 clearly understood that we understood it to be a civil
16 division, and that in that phrase, the Legislature has
17 great range of definition and freedom to take care of
18 problems that may arise in the future.

19 THE CHAIRMAN: That is not the answer to
20 Mr. Mindel's question. Specifically, there is not in
21 this Article a definition of the term, civil divisions.

1 MR. CLAGETT: That is true. It is open for
2 definition.

3 MR. MINDEL: Is it a governmental unit or not?

4 MR. CLAGETT: It is meant to be a local sub-
5 division governmental unit.

6 THE CHAIRMAN: Mr. Miller?

7 MR. MILLER: You refer to a County's charter.
8 Does any County have a charter?

9 MR. CLAGETT: Yes, there are four that have
10 charters now, Baltimore County, Montgomery County, Anne
11 Arundel County and Wicomico County, and a fifth County,
12 Baltimore City. Now, I want you to clearly understand
13 in answering your question, Mr. Mindel, we do not
14 attempt to restrict it to be representative form of
15 government.

16 THE CHAIRMAN: By which you mean elected
17 representatives?

18 MR. CLAGETT: It is broader than that, an
19 authority, for example, would not necessarily have elected
20 officials. They could be appointed, and we intend for
21 the phrase, civil division, to be susceptible of

1 definition as time and circumstances require.

2 MR. MINDEL: You don't think it would be appro-
3 priate to put in a definition now?

4 MR. CLAGETT: I don't think so. Attempting
5 to define it now, it would be unduly restrictive.

6 MR. BOND: The word, transferred to another
7 civil division, transferred by whom, by legislation, law
8 or how?

9 THE CHAIRMAN: That if you will hold it, it
10 will be clearer later on.

11 MR. CLAGETT: Let me explain. After we
12 failed to come up with it on the agenda for about four
13 times, and some of those metaphors, Mr. Eney said, Well,
14 you have got a great big job yet to be done, and you
15 better go ahead and do it, so we disagreed with him
16 because we thought we had already done it; and we decided
17 we would have a meeting at the Maryland Club, and we
18 all met there and who should walk through the door but
19 Mr. Eney. We were there until midnight that night, that
20 was Tuesday night, so he said, Well now, have you arranged
21 when you are going to meet again, and that happened to

1 be Thursday night, and we were there until 12:30 that
2 night, and then this Report that I am reading to you now,
3 I read while Mr. Case was giving his Report this morning.
4 So it has a degree of originality. When we hit that one
5 phrase there, it involves this business of regional
6 governments, et cetera, and when we get to that, I dare-
7 say we will be here until tomorrow. It is all very
8 interesting, but somewhere you are going to have to
9 resolve these things as we did and notwithstanding the
10 good suggestions we got from our worthy Chairman, we had
11 a variety in some respects as you will see later.

12 Now, let's move on into Subsection (d), because
13 here is another big area of controversy and one where
14 we debated long and strenuously. Counties, classes of
15 Counties -- based upon population as determined by the
16 most recent United States census, may be provided by law
17 with not more than five classes and not less than three
18 Counties in any one class. No more than one classifi-
19 cation shall be in effect at any one time, but the
20 classifications may be changed at any time.

21 Now, here again, the Committee is seeking to

1 give to the General Assembly a degree of flexibility.
2 Again, I repeat, if I keep on using that word, flexible
3 and inflexible, it will come to have a meaning as a word
4 of art, because it does have a lot of use. Now, what
5 we mean by degree of flexibility is that if the Counties
6 are going to have a broad grant of power, that is any
7 and all executive and legislative power not denied to it
8 as defined, the Legislature is still going to have the
9 responsibility of taking care of conflicts that are
10 going to arise between various Counties, and we want the
11 Legislature to be able to step into an area of contro-
12 versy and to be able to deal with less than all of the
13 Counties.

14 Now, later we will define what is meant by
15 public general laws, and here you will find that a public
16 general law is one which will apply to a, to all Counties
17 within a class. Now, ultimately, of course, the General
18 Assembly if it is given the power of classification,
19 could classify into 24 different classes, and we are
20 right back where we started from with the General Assem-
21 bly enacting local legislation. The Committee determined

1 early that it was going to accomplish the removal of
2 the General Assembly from the field of local legislation.
3 Now, in accomplishing that, you have still got to keep
4 an eye upon the degree of flexibility on the part of the
5 General Assembly to take care of areas of conflict. In
6 order to be sure that it didn't classify into 24 dif-
7 ferent classes, we put a restriction upon the number of
8 classes, and we debated what that should be, and finally
9 determined that it should be not more than five classes,
10 and then in order that there be imposed upon the General
11 Assembly a degree of serious considerations, we provided
12 that there should be not less than three Counties in any
13 one class.

14 MR. SCANLAN: Hal, may I ask a question? I
15 can see why you did that, but you say not less than three
16 Counties in any one class. There could come a time
17 when you have five or six Counties of roughly the same,
18 say smaller population. Why would you have to divide that
19 into two classes? I suppose your answer is that --

20 MR. CLAGETT: There shall be not less than
21 three Counties in any one class, but there shall be not

1 more than five classes.

2 DR. BARD: This isn't a time to ask questions,
3 is it?

4 THE CHAIRMAN: Yes.

5 DR. BARD: In studying classification as it
6 is practiced in many parts of the country, it is true
7 that a County that separates itself rather uniquely from
8 the very next one has the privilege of occupying perhaps
9 that category alone. I am thinking of Baltimore City
10 as an illustration, Baltimore City County. There are
11 problems that are unique to Baltimore City, and if the
12 Legislature, let us say, should pass some enactments that
13 would hold true for classifications which included Balti-
14 more City just by way of illustration, Baltimore County
15 and Montgomery or Prince Georges, to take population as
16 a basis, then Baltimore City is struck with this decision,
17 and it may well be that if Baltimore City wanted to take
18 the lead in regard to setting up some new ideas whether
19 they are related to human relations or whether it be re-
20 lated to occupational opportunities, it couldn't do so
21 because there wasn't enactment for the entire classifi-

1 cation which embraced Baltimore County which was second
2 in population.

3 MR. CLAGETT: That is quite true, and we
4 debated whether or not the classification should be upon
5 population only or upon some other criteria as determined
6 by the General Assembly to be appropriate. If we had
7 that second phrase in, there would be a degree, a greater
8 degree of flexibility than merely limiting it to popu-
9 lation. But, nevertheless, you've got to keep in mind
10 here that we are basically attempting to accomplish the
11 elimination of the General Assembly from the field of
12 local legislation, and we don't want the General Assem-
13 bly stepping in and legislating only for Baltimore City.
14 We want Baltimore City, having been given the broad
15 grant of legislative and executive power here, to be
16 protected in that grant and not have it arbitrarily
17 withdrawn.

18 DR. BARD: I want to do the same thing you
19 want to except under (a) this says to all Counties of
20 its class, wherever if the General Assembly had passed
21 some enactments that applied to the Counties in

1 Classification A, let us say, and if Baltimore City
2 wanted to, as it is doing right now in particular areas
3 of human relations, let's take such enactments as though
4 concerned with the law practice, it couldn't do because
5 the General Assembly had already arranged for all the
6 Counties in that particular category, and therefore
7 Baltimore City would have lost its opportunity.

8 MR. CLAGETT: Not necessarily.

9 MRS. FREEDLANDER: Each of the Counties, each
10 of the constituent units under each of their charters
11 could still function. We are talking about here the
12 General Assembly cannot legislate in these areas.
13 Baltimore City, within its Charter and within its ordi-
14 nances, could do all these things.

15 DR. BARD: Except in one case. I understand
16 you perfectly, Mrs. Freedlander, except in those cases
17 where, if you read (a) is applicable to all Counties --
18 or to all Counties of its class. It could not function
19 if laws had been passed.

20 MRS. FREEDLANDER: The charter takes precedence
21 here. It says, not denied to it by its charter, or by

1 law, and so in its charter, if it has this kind of pro-
2 vision, it could continue to have this provision?

3 THE CHAIRMAN: Well, it seems to me there are
4 two different concepts you are talking about, and I think
5 Dr. Bard is making a valid point, although I disagree
6 with his conclusion. One is the specific act of the
7 General Assembly which says, Thou shalt not, to a group
8 of Counties, exercise a group of powers. If the Legis-
9 lature passes such a law, then no County, including the
10 City of Baltimore can exercise such power and the Com-
11 mittee's position is that if it makes it applicable to
12 not less than three Counties, that is a sufficient as-
13 surance that it is not a riper bill that is designed to
14 apply to only one County. The second provision is the
15 provision in the third paragraph which gives precedence
16 to public general laws. You can't take away from the
17 Legislature the power to pass legislation generally.
18 Here, again, this may be by classification, and it could
19 be applied to as little as three Counties. Now, what
20 you are saying is that you may have a situation where the
21 General Assembly ought to be able to pass a special law

1 for Baltimore City only, and the Committee has crossed
2 this Rubicon by saying to do that means to give the
3 Legislature the power to pass local legislation, and they
4 have said they are going to dissolve that dilemma by
5 not doing it.

6 DR. BARD: My point really goes back to this
7 concept of not less than three Counties in any one class.
8 Many States in setting up the classifications recognize
9 the fact that there may well be one County which is so
10 far different from the next County, let us say in line,
11 that it is deserving of occupying a classification of
12 its own.

13 THE CHAIRMAN: The minute you do that, you
14 have thrown overboard this entire concept of the Committee,
15 because this is the basis on which the whole scheme of
16 public local legislation is really based. The fact that
17 you can have a general law and accept 22 Counties --

18 DR. BARD: I don't want 22, but I like the idea
19 of classification as a basis and not the idea of complete,
20 let us say independence.

21 THE CHAIRMAN: I am violating the rule we

1 laid down. We are now debating, the Commission, the
2 issue is clear the Committee did this deliberately.

3 MR. DELLA: In an area such as Western Mary-
4 land, Garrett and Allegheny County where they tried to
5 pass legislation on strip mining, and I don't think they
6 have any strip mining outside of those two Counties,
7 would this exempt the Legislature from passing that be-
8 cause only two Counties would be involved?

9 MR. CLAGETT: No, it would not. They can
10 pass a law that applies to all the Counties, and the mere
11 fact they have strip mining doesn't mean you couldn't
12 have strip mining some day down in Calvert and Charles,
13 and the law would apply there to the same degree and
14 same effect.

15 MR. MARTINEAU: Mr. Clagett, is it clear the
16 classes you are talking about in (c) are the same classes
17 you are talking about in (b), that is, that if you pass
18 a public local law applying to the Counties of a class,
19 that that class isn't something you make up from time
20 to time, but applies to everything with respect to that
21 clause?

1 MR. CLAGETT: Yes, we are talking about the
2 same class, and I think the answer is in the last sen-
3 tence of Subsection (b) where we say, No more than one
4 classification shall be in effect at any time, but the
5 classification may be changed at any time.

6 MR. MARTINEAU: To me it is not clear, that
7 the class in (c) is the same as the class in (b), but if
8 it is, it is fine.

9 THE CHAIRMAN: The answer to your question at
10 the moment is, it is intended to be.

11 DR. MICHENER: As I read this, classes are
12 based upon population according to most recent census.
13 So, even though the classes are appropriate, they will
14 have to be adopted after a new Assembly. What you mean
15 is assignment of Counties to classes, according to the
16 most recent census. There is a difference.

17 MR. CLAGETT: One is interchangeable with the
18 other. If you change the assignment of Counties, then
19 you would be then changing the classification, and the
20 old classification would then be dissolved. There can
21 only be one classification in effect at any one time, and

1 the effect of a new classification would be to dissolve
2 the old.

3 THE CHAIRMAN: Without getting into language
4 at the moment, I call your attention to the distinction
5 of using the word, classes, in the first instance and
6 classification, in the last, and may still be subject to
7 the problem that you mentioned, but that is more a matter
8 of language than the intent of the Committee.

9 MR. CLAGETT: It is meant that no one County
10 can be in more than one class at any time. Subsection
11 (c) defines general laws.

12 Public general laws may be enacted which shall,
13 in their terms and in their effects, apply without
14 exception to all Counties or to all Counties in a class.
15 No County shall be exempt from any public general law.
16 Now, there we define what is meant by a public general
17 law giving it two definitions. All Counties or all
18 Counties in a class, and then we also specifically make
19 clear that no County shall exempt itself or be exempt
20 from public general law.

21 THE CHAIRMAN: Dr. Michener?

1 DR. MICHENER: You mean applicable to all
2 Counties or all Counties of its class?

3 MR. CLAGETT: That is correct.

4 THE CHAIRMAN: In the last sentence.

5 MR. CLAGETT: It is in there?

6 THE CHAIRMAN: After the words, public general
7 law, at the very end of the Section, you should have,
8 applicable to other Counties in its class.

9 MRS. FREEDLANDER: We have that in our copy.

10 DR. BARD: No, you don't.

11 THE CHAIRMAN: But again, let's pick that up.
12 That is a change that is a matter of phraseology.

13 MR. CLAGETT: No Counties shall be exempt from
14 any public general law.

15 THE CHAIRMAN: Applicable to other Counties in
16 its class.

17 MR. CLAGETT: If we define general public
18 law, why doesn't it include that?

19 THE CHAIRMAN: Read the sentence again, Hal,
20 and you will see it is necessary. No County shall be
21 exempt from any public general law. You don't mean that.

1 You mean any general public applicable to Counties in
2 its class.

3 JUDGE ADKINS: The County might be exempt if
4 the law is not applicable to classes.

5 THE CHAIRMAN: No, what you mean, if you
6 divided the State into five classes, you might have a
7 public general law applicable to two classes but not the
8 other three.

9 JUDGE ADKINS: Is there any reason under this
10 provision why a County might not elect to exempt itself?

11 THE CHAIRMAN: It is intended. Whether the
12 language is clear, I don't know.

13 JUDGE ADKINS: My question is whether the
14 language is clear.

15 THE CHAIRMAN: Well again, let's come back
16 to it.

17 Mr. Sykes?

18 MR. SYKES: What is the purpose of the word
19 in its effect? I am thinking particularly of Mr. Della's
20 example where you might have a law applicable to strip
21 mining passed as a general State wide law, but it only

1 has effect in two Counties, and if you say that it has
2 to apply in its terms and in its effects to all Counties
3 or to all Counties of class, and it only applies in its
4 effects to two Counties, I wonder if you aren't
5 creating problems?

6 MR. CLAGETT: It would still be in its effects.

7 MR. SYKES: It would be, but as of the
8 time it passed, it doesn't. I just question whether
9 the phrase doesn't confuse more than it helps. It is
10 enough that the law is applicable to all Counties or
11 all Counties in a class.

12 THE CHAIRMAN: I think the difficulty comes
13 from the language used by the Court of Appeals in so
14 many decisions discussing this question of public gen-
15 eral laws and public local laws.

16 MR. SYKES: You say it is applicable without
17 exception to all Counties in the State or all Counties in
18 a class. I am afraid of the distinction because the only
19 reason you could possibly have for saying both of them is
20 to make a distinction between the two. That causes
21 trouble.

1 MR. CLAGETT: We made a study of how best to
2 define a public general law, and it came up with about
3 fifty different ways of choosing to define it and choos-
4 ing among the fifty we came up with this term of, in its
5 terms and in its effects. You are dancing on needle
6 points.

7 MR. SYKES: I point out the problem. That is
8 all.

9 THE CHAIRMAN: We will come back to it.

10 Mr. Case?

11 MR. CASE: I am just wondering what the real
12 necessity for the second sentence in (c) is.

13 MR. CLAGETT: Well, you are really hitting
14 the solar plexus. You might as well get an honest reac-
15 tion. We are all familiar with the traditional tendency
16 on the part of Counties to exempt themselves from a
17 public general law which then means that a public general
18 law ended up in effect as a public local law. Now,
19 this is here so that there can be no question but that
20 what we mean to avoid is the process of Counties exempt-
21 ing themselves from a public general law so that it

1 winds up as a public local law applicable to only one
2 political subdivision.

3 MR. SCANLAN: Doesn't the phrase, without
4 exception, get it?

5 MR. CLAGETT: Not quite.

6 MR. SCANLAN: You want a phrase in there
7 saying we really mean it.

8 MR. CLAGETT: Let it be known we really mean
9 it. Subsection (d), the General Assembly may authorize
10 civil divisions other than Counties and municipal
11 corporations to administer single or multi-purpose func-
12 tions that transcend local boundaries and grant to
13 them the power to impose and collect revenues to borrow
14 money and to collect taxes imposed by the General Assem-
15 bly.

16 Now, here we are speaking out that the General
17 Assembly may take advantage of the device of inter-
18 governmental authorities within the authorization to
19 create civil divisions, and we are spelling it out for
20 purposes of clarification and for purposes also of carry-
21 ing out the Commission's restriction to be imposed upon

1 the taxing power, and here you will notice that we
2 specifically say that they may impose and collect revenues
3 but only taxes that are imposed by the General Assembly.
4 I think this ties in with the philosophy and the purport
5 of the recommendations of the Committee on Finance.

6 THE CHAIRMAN: Mr. Case?

7 MR. CASE: I would suggest to the Chairman
8 that our recommendation is not so restrictive and that
9 indeed, it could be possible and should be allowed that
10 these civil divisions could collect taxes imposed by
11 the, by other elected bodies than the General Assembly.
12 For example, one of the best illustrations of your
13 civil divisions is your Sanitary Division, which can be
14 created under the new provisions of Article 43 in any
15 of the Counties. These districts are permitted to deter-
16 mine whether or not a tax is necessary, and if a tax is
17 necessary, then the County Commissioners are given the
18 right to impose that tax. It goes on the tax bill and is
19 used for their purposes.

20 So I am suggesting that the use of the words,
21 General Assembly, in this context should be broadened to

1 provide that, any elected representatives of the people,
2 as we talked about earlier today.

3 MR. CLAGETT: I point this up only for your
4 consideration, since we are digesting this. By the
5 broad grant of power in Subsection (a), there is no
6 restriction upon the County in the exercise of the tax
7 power. Now, if the County enters into an agreement, as
8 later provided under intrastate intergovernmental agree-
9 ments in another Subsection here, with another County,
10 they could delegate and carry out the very thing that
11 you are speaking about here. In this Section, Subsec-
12 tion (d), we are providing for the General Assembly
13 creating these intergovernmental --

14 MR. CASE: That is not what I am talking about.

15 MR. CLAGETT: I know what you are talking about.
16 You mean it would be a representative, that the power
17 to impose and collect taxes would be by a representative
18 government.

19 MR. CASE: No. They have the right to collect
20 taxes imposed by any body of elected representatives
21 who have the authority to impose taxes in the area that

1 that they are collecting them in. This is what I am
2 talking about, and actually, the way you have it written
3 here, in accordance with our current practice, would be
4 really inapplicable because the taxes that these local
5 civil divisions actually collect are not imposed by the
6 General Assembly at all. They are imposed by the County
7 Commissioners. So the way you've got it written, the
8 way the Committee has it written just wouldn't work.
9 You are talking about direct taxes, real estate taxes,
10 by and large.

11 MR. CLAGETT: That is correct.

12 MR. CASE: And these are not imposed by the
13 General Assembly.

14 MR. CLAGETT: All right, I would suggest that
15 when we get back to that, we might enlarge it because
16 what we do intend to imply here is that the correct taxes
17 shall be imposed by a representative legislative group
18 rather than necessarily restricting it to the General
19 Assembly.

20 MR. CASE: But may be collected by the civil
21 division.

1 MR. CLAGETT: As in the case -- well, no, the
2 Washington Suburban Sanitary Commission determines the
3 rate, and the County does the actual collecting.

4 MR. CASE: That is the point. The County
5 does the actual imposing, and in that case, the collect-
6 ing, but insome areas, the County does the imposing but
7 the civil division does the collecting.

8 MR. CLAGETT: True.

9 MR. DELLA: Are Hal and Dick talking about
10 income taxes as well as revenue taxes, or just revenue
11 taxes?

12 MR. CLAGETT: We were there talking about
13 direct taxes on property.

14 MR. DELLA: And not income taxes?

15 MR. CLAGETT: Not at that point.

16 DR. MICHENER: I would like to ask the converse
17 of the question. Can the General Assembly under its
18 prohibition against local legislation render a tax against
19 the district they are going to collect?

20 MR. CLAGETT: If it does so generally in terms
21 applicable to all Counties.

1 DR. MICHENER: If it is a particular district
2 and they are trying to solve it on a particular problem,
3 the General Assembly couldn't do it, because it wouldn't
4 be applicable throughout the State perhaps.

5 MR. CLAGETT: That may be, except I don't
6 think there is any restriction on the General Assembly's
7 plenary power to tax.

8 THE CHAIRMAN: Mr. Mindel?

9 MR. MINDEL: Transcend local boundaries. What
10 do you mean, local units within a single position? It
11 is not yet clear what you mean by local boundaries.

12 MR. CLAGETT: Originally, we were dealing
13 with actually the municipalities as well as the Counties.
14 Now, as applied here by reason of the fact that there
15 has been a change in venue since this language was actually
16 written, it was not so much applied to the municipality
17 and the County within the same County geographic boun-
18 daries, it would be County to County, or actually a
19 municipality if given the authority by the County to
20 enter into compacts with another municipality or County.
21 There are five cities within the State which actually are

1 divided by a County boundary. Takoma Park, for example,
2 which is in Montgomery and in Prince Georges. We hope
3 that those problems will be able to be resolved by
4 agreement and later when we define what we mean by
5 agreement, it will tend to tie in here. But if they
6 can't agree, then the General Assembly may come into
7 the picture and by the use of this device, create an
8 authority to resolve the conflicts between us. So, it
9 would be transcending both of municipal boundaries as
10 well as County boundaries.

11 MR. MINDEL: Suppose you had a metropolitan
12 area of Baltimore City, Baltimore County and Anne Arundel
13 County. The local boundaries would be the local boun-
14 daries of the City, and each one of the Counties. Is
15 that what is meant by this?

16 MR. CLAGETT: That is right.

17 MR. MINDEL: And the General Assembly could
18 authorize that?

19 MR. CLAGETT: Yes.

20 THE CHAIRMAN: Mr. Case?

21 MR. CASE: Mr. Chairman, may I make one

1 observation and one statement?

2 The observation, the statement is that I
3 haven't had a chance to read all this material because
4 I didn't enjoy the luxury that Mr. Clagett did. In other
5 words, I haven't been able to read his Report while he
6 was giving his Report like he read his Report while I
7 was giving my Report, but I would guess that there may
8 or may not be anything in the rest of the Report, Hal,
9 relating to the borrowing of money; and I should like,
10 since my somewhat restricted province in this Commission
11 has been relegated to taxes and borrowing and financial
12 matters, to observe one thing to you and your Committee,
13 and that is this:

14 That civil divisions in Maryland as of now,
15 and this has been true ever since, well, for all my time,
16 have not been given the power to borrow money. They
17 have only been given, except the Washington Suburban
18 Sanitary Commission -- they have been given the power to
19 recommend the borrowing of money and to borrow it upon
20 the concurrence of the elected representatives of the
21 people who have also imposed the tax, and the reason for

1 that is that it has been considered not good governmental
2 procedure to let one organization incur a lot of debt
3 and then have another political entity have to go out
4 and raise the revenue for it. I am wondering whether
5 or not this concept was given any, or whether this con-
6 cept depends in part or intends to depart from that
7 statement.

8 MR. CLAGETT: No, it is contemplated the
9 General Assembly in the exercise of its withdrawal powers
10 will take care of that situation.

11 THE CHAIRMAN: Well, I don't know that that
12 is quite an answer to the question, Hal. It seems to
13 me that there is a partly historical answer. As this
14 Section was originally drafted by the Committee, you
15 authorized the General Assembly to authorize the other
16 authorities to impose and collect revenues to borrow money
17 and to impose taxes which would have been consistent
18 with what Dick has been talking about. The Commission at
19 the last meeting amended that so as to restrict the
20 power of the authority to impose taxes and to that extent,
21 made it inconsistent with this principle.

1 MR. CASE: I think it ought to be consistent,
2 that is right.

3 MR. MINDEL: I would like to ask Dick a ques-
4 tion, if he understands this will or will not do away
5 with enabling legislation when it comes to borrowing
6 money. Don't you need enabling legislation before the
7 Counties or their agencies can borrow money?

8 MR. CASE: You need it now.

9 MR. MINDEL: What will happen under this par-
10 ticular provision? Will some of the divisions be able
11 to borrow without enabling legislation?

12 THE CHAIRMAN: Unless the General Assembly
13 under Paragraph (a), by general law applicable to one
14 or more classes of Counties specifically withdraws the
15 power to borrow money or passes a general law applicable
16 to classes of Counties spelling out the restrictions on
17 the borrowing power, then the Committee's concept of
18 power is that the County would have the power to borrow
19 money.

20 DR. BURDETTE: Doesn't the language say that
21 the General Assembly may authorize these divisions?

1 THE CHAIRMAN: You are talking about Para-
2 graph (d)?

3 DR. BURDETTE: Yes, I am talking about (d).

4 THE CHAIRMAN: (d) is limited to other than
5 Counties and municipal corporations.

6 DR. BURDETTE: You are talking about Counties.

7 THE CHAIRMAN: Mrs. Bothe?

8 MRS. BOTHE: Would this right of the Counties
9 to borrow money not be subject to the same restrictions
10 of the State under our Code, that the divisions are
11 subject to?

12 THE CHAIRMAN: No, the State Finance Committee
13 specifically left that to the Committee on Political
14 Subdivisions, and Section 34 does not apply.

15 MR. CASE: That is correct.

16 MRS. BOTHE: That is my question. Will the
17 Counties then have ability to contract debts for which
18 they have no revenue raising powers to meet?

19 THE CHAIRMAN: They do have revenue raising
20 powers.

21 MRS. BOTHE: What I mean is if they want to

1 go out and contract a debt, will they be free to do so
2 even though the State Government isn't?

3 THE CHAIRMAN: As Mr. Clagett pointed out, under
4 (a) the County will have full power except as limited
5 by the Legislature. There is no constitutional limita-
6 tion on the power to borrow money.

7 MRS. BOTHE: So they can do what the State
8 Government cannot do?

9 THE CHAIRMAN: The difference is, if you didn't
10 put it in the Constitution, there would be no limitation
11 on the Legislature. As to political subdivisions, you
12 do have the limitation.

13 MRS. BOTHE: But which you may or may not do?

14 MR. HAILE: It already has a limitation.
15 The Legislature has limited Counties.

16 THE CHAIRMAN: You are talking about its
17 present makeup. We are talking about under the Consti-
18 tution.

19 MR. CLAGETT: If it did reenact the same
20 applicable law as a general law, it would impose a res-
21 triction.

1 MRS. BOTHE: If the Legislature says the
2 Counties can all go broke --

3 MR. BOND: Then let them go broke.

4 MR. CASE: I don't understand Mr. Haile's
5 statement.

6 THE CHAIRMAN: He said that the present law
7 contains a limitation and that the Legislature would
8 probably enact such a law in the future.

9 MR. CASE: What is the limitation?

10 MR. HAILE: It is in the Expressed Powers
11 Act, borrowing must be submitted for referendum except
12 in the case of bonds.

13 MR. CASE: It is in the Baltimore County
14 Charter, and is not an Expressed Powers Act. If it is
15 I have approved about \$100 million dollars' worth of
16 bonds that are illegal because it is not required in
17 Montgomery County.

18 MR. HAILE: You are more expert in this field
19 than I. That was just my impression.

20 MR. CASE: It is in the Baltimore County
21 Charter. That is why you have to vote your bonds and not

1 an Expressed Powers Act.

2 THE CHAIRMAN: Any further question? Go ahead,
3 Mr. Clagett.

4 MR. CLAGETT: Section 11.03 deals with the
5 structure of County governments. Subsection (a) reads,
6 A County shall provide for the structure of its govern-
7 ment by any one of the following procedures. Subsection
8 1: The General Assembly shall provide for optional plans
9 of organization and structure so as to enable the County
10 to adopt or abandon an optional form of local government
11 by a majority vote of the qualified voters voting thereon.
12 Now, here this simply says that the General Assembly
13 can come up with model plans and the County can adopt
14 one of those plans. We anticipate that the General
15 Assembly will come up with model charters as it has
16 in Article 23 (b), and will also come up with the Code
17 County provision which it is working on now, and which
18 will, of course, be up for vote on November 8. So, here
19 we provide this method of having the County adopt a
20 form for structure of government to enable it to carry
21 out the broad grant of power which we interpret to mean

1 the grant of Home Rule power.

2 Secondly, on request of the executive and
3 legislative authority of any County or on a petition
4 bearing the signatures of 10 per cent of the qualified
5 voters provided that in any case 10,000 signatures shall
6 be sufficient to complete a petition, the officer or
7 agency responsible for certifying public questions
8 shall provide at the next general election for the election
9 of a charter board of five registered voters from that
10 County. Nominations for members of the charter board
11 may be made not less than 40 days prior to the election
12 by the executive and legislative authority of the County
13 or not less than 20 days prior to the election by a
14 petition bearing the signatures of 5 per cent of the
15 qualified voters provided that in any case 2000 signatures
16 shall be sufficient to complete a nominating petition.
17 At the election, the ballot shall contain names of the
18 nominees and shall be so arranged as to permit voters to
19 vote for or against the creation of a charter board.
20 If the majority of the votes cast on a proposal to create
21 a charter board is against the proposal, the election

1 of members of the charter board shall be void. If the
2 majority is in favor of the creation of a charter board,
3 then the five nominees receiving the largest number of
4 votes shall constitute the charter board. Any proposed
5 charter or charter amendments shall be published by
6 the charter board, made available for the qualified
7 voters and submitted to them at the first general
8 election more than 30 days after publication. The
9 executive and legislative authority of the County shall,
10 on request of the charter board, appropriate money to
11 provide for the reasonable expense of the commission
12 and for the publication, distribution and submission of
13 its proposals.

14 A charter or charter amendments shall become
15 effective if approved by a majority of the votes cast
16 by qualified voters. A charter may provide for direct
17 submission of future charter revisions or amendments by
18 a petition or by resolution of the local executive and
19 legislative authority. On its adoption, the charter
20 shall become the law of the County subject only to the
21 Constitution and public general laws of this State, and

1 any public local laws inconsistent with its provisions
2 and any former charter shall thereby be repealed.

3 THE CHAIRMAN: Any question as to Paragraph 2?

4 MR. CLAGETT: Now, this is, in effect, the
5 existing language as contained in Article 11 (a).

6 THE CHAIRMAN: Mr. Bond?

7 MR. BOND: I see there is quite a difference
8 between this and that which is in the Fifth Report.
9 My question is, is this mandatory Home Rule, or is it
10 not?

11 MR. CLAGETT: Mandatory Home Rule, I think,
12 is best, well, this Report mandates Home Rule. We
13 have skipped over the adoption process, and we have given
14 to a charter, if a charter is in existence now, that is
15 a charter County if it has already a charter, or we have
16 given to the County Commissioners if no charter is in
17 effect, the broad powers which we contemplate and think
18 of as being Home Rule.

19 Now, in the next Section, we deal with a third
20 means by which a County can adopt a charter, and there
21 we say the governing body of any non-chartered County,

1 by a majority vote of its elected members may propose by
2 resolution that the County become a charter County and
3 that (a), all charters be prepared by the means it
4 specifies. Upon the completion of the proposed charter,
5 it shall be published and made available to the quali-
6 fied voters and submitted to them at the first general
7 election after the first 30 days after publication.

8 If adopted, it will be subject to the same
9 constitutional limitations and privileges as those
10 charters first submitted by a charter board. However,
11 if at a general election, there shall be submitted to
12 the voters of the County a proposed charter drawn by a
13 charter board, only that charter shall be submitted.
14 If the charter board proposed charter is adopted by the
15 voters, any charter drawn by a means specified by the
16 County governing body shall not be submitted to the
17 voters and have no further effect. If a charter drawn
18 by the charter board is rejected by the voters, and a
19 charter drawn by the County charter board --

20 MR. SYKES: Mr. Chairman, pardon me, Section
21 11.02 gives Home Rule in effect by saying that the

1 County already has the legislative powers not exercised
2 by the Legislature. My question is, what happens if
3 a County doesn't do anything under 11.02?

4 MR. CLAGETT: Then it carries out the broad
5 Home Rule powers by its existing form of government.
6 We have debated this carefully, and we are convinced that
7 a charter is the best structure by which the Home Rule
8 powers can be exercised. But we have also seen the
9 experience in the Counties and particularly, for example,
10 in Prince Georges County where by grant of the General
11 Assembly broad powers have been given and effectively
12 utilized with the existing form of structure. So we do
13 not mandate. We meet it as a matter of choice in any
14 one of the three ways. A model presented by the General
15 Assembly, a charter board procedure, or a resolution of
16 the existing governing body. We do not mandate the
17 charter.

18 MR. SYKES: My point is --

19 THE CHAIRMAN: Mr. Sykes, I think the direct
20 answer to our question is determined by the Committee
21 to be in the first part of the sentence of (a), A County
~~shall provide for the structure of the government by~~

1 any one of the following ways.

2 MR. SYKES: Yes, but my question is, what
3 happens if it doesn't do it one of these three ways? I
4 mean, it's got power under the other Section. It just
5 doesn't act. Compel action by any one of these three
6 ways. There is no mandamus. Does that mean the County
7 Commissioners who like the idea of exercising power of
8 all the Home Rule power by themselves without the appoint-
9 ment of a charter board and without the submission of a
10 form of exercise of these powers to the electorate can
11 go ahead and do it?

12 MR. CLAGETT: That is correct.

13 MR. SYKES: Well, that is inconsistent.

14 MR. CLAGETT: Why not?

15 THE CHAIRMAN: Mr. Michener?

16 DR. MICHENER: My question related to 2, and
17 it got to 3 before I got a chance. When you say it
18 will become effective when approved by a majority of the
19 votes cast by a majority of the voters, you have specified
20 this will be a general election. Are you speaking of
21 the voters on this issue or the voters in the election?

1 They are two different things.

2 DR. BURDETTE: You brought this up.

3 MR. CLAGETT: This is the referendum pro-
4 tection in the County, and it would be a majority of
5 the voters voting on the question?

6 DR. MICHENER: That is not what I said.

7 MR. CLAGETT: Let me suggest this: Because
8 we ended up at 12:30 Thursday night, and we rewrote
9 this Section, and I didn't have the benefit of getting
10 the new Section until today, I rewrote the Section on
11 the basis of our understanding, and I prefer what I
12 wrote then to what I am reading now. It is basically the
13 same thing, but it simplifies it and clarifies it. We
14 do propose as a Committee to take this very language we
15 are reading now and simplify it and clarify it. It will
16 be the voters voting on the question, the majority of
17 the voters voting on the question.

18 THE CHAIRMAN: Mr. Scanlan?

19 MR. SCANLAN: The only comment I have is that
20 this Section seems unduly long, and you have now and es-
21 pecially Paragraph 2 and 3, a matter that I think would

1 be better left to a statute of the General Assembly. I
2 am not suggesting at this late hour that I could suggest
3 language that would incorporate in another sentence tacked
4 onto A-1, all you have specified in 2 and 3, but I do
5 think --

6 THE CHAIRMAN: The Staff has prepared such
7 a draft. It is in your hands, and we can come to it
8 when we consider the language later. Let me say in further
9 response to Mr. Sykes that I personally think one of the
10 difficulties with the earlier Section is that there is
11 nothing that says in so many words that the existing
12 Counties shall be, shall continue until changed by the
13 Legislature, but I think if you had such a provision,
14 that tied in with 11.03 or rephrasing it would carry out
15 the intent of the Committee, that a County may have
16 almost any form of government, either the County Com-
17 missioner form of government or charter form of govern-
18 ment or some other form of government, but whatever form
19 of government it has, it must exercise the power of local
20 legislation.

21 MR. SYKES: I concur, but I was concerned with

1 the Committee gap, and if you didn't do one of those
2 three things, then you didn't have the power that was
3 given in the other rule.

4 THE CHAIRMAN: I think another assumption by
5 the Committee, Mr. Clagett, was, was it not, that under
6 1, the Legislature would probably provide model forms
7 of charters and would say that if a County does not pro-
8 ceed under one of the other ways, it should automatically
9 acquire one of the charters specified by the General
10 Assembly.

11 MR. CLAGETT: That is in one of the alternative
12 approaches. Actually, the Committee felt that the limi-
13 tation of time by which a County shall be required to
14 adopt a charter form would not be excluded in our recom-
15 mended approach. If it took twelve years for the County
16 to get around to adopting a charter form of government,
17 then it will take the twelve years. There have been
18 various proposals, one of which is that if after four
19 years a County shall have failed to adopt a charter or a
20 form or structure of government to take care of the
21 effective use of the Home Rule powers, then a plan provided

1 by the General Assembly shall become effective. But
2 that is an alternative and is not the recommendation of
3 the Committee.

4 MR. CASE: Isn't the practical answer to what
5 Mr. Sykes is saying, and I certainly share is apprehension
6 that the words that are used here, that Legislature
7 will not be authorized or empowered to pass any local
8 legislation after this goes into effect. If you can't pass
9 any local legislation, the County has to go to one of
10 these things pretty fast or if it doesn't, it can't
11 do anything.

12 THE CHAIRMAN: It could pass local legislation
13 by the County Commissioner form of government.

14 MR. CASE: Well then, it is given charter in
15 effect, charter type of government, Code type of govern-
16 ment which brings me to a second question, if I may ask
17 the Chairman; and that is, would you state for us as
18 succinctly as you may or wish to, just what the differ-
19 ence is between the substance of this draft that you have
20 now read and the substance of what we will have after the
21 people adopt the constitutional amendment? That is on

1 the ballot authorizing the Code County.

2 MR. CLAGETT: Assuming on November 8, 11 (f)
3 is an additional part of the Constitution, a County,
4 in order to take advantage of and become a Code County
5 must follow the procedure there provided, and it must
6 adopt, it must exercise its option to adopt a Code
7 County approach. Implementing legislation has already
8 been drafted, based upon an anticipated adoption of
9 Article 11 (f), and substantially it is a reenactment
10 of Article 23, I mean, it is a substantial reenactment
11 of Article 23 (b), which is the one providing for the
12 County Commissioner form of government. Insofar as
13 the difference between this and that under this approach,
14 it will be one of the optional plans that can be adopted
15 by the County along with a form of optional charter plan.
16 It will be one of several possibilities that the County
17 can adopt. Now, if the County adopts none, it will have
18 to continue to exercise the broad grant of power under its
19 existing County Commissioner form of government without
20 the benefit of the structure.

21 MR. CASE: So that the only real difference is
~~that under the present Constitution if it is amended by~~

1 (f) if the County does nothing it will still have to go to
2 the General Assembly and get a local law passed, for
3 example, if it wants a bond issue, whereas if this
4 were the law, then the County Commissioners apparently
5 inherently would have the power to do this even though
6 they hadn't adopted a Code or form of government?

7 MR. CLAGETT: That is correct.

8 THE CHAIRMAN: Mr. Della?

9 MR. DELLA: Mr. Chairman, it seems to me that
10 adopting this proposal or something similar to it, that
11 it would be wise to have a time period in which the
12 Counties could adopt a local Home Rule law, charter govern-
13 ment, and in that period of time which would be limited
14 by the Legislature that the Legislature would take care
15 of their local problems in this time. The reason I make
16 this statement, there may be and I am not sure this
17 prevails, there may be some Counties that have County
18 Commissioners that are doing a fairly decent job as
19 County Commissioner but maybe the people wouldn't want
20 them to legislate all the laws for the local County as
21 such.

1 Now, if this law would go into effect right
2 away, the County Commissioners are going to have to take
3 over if the people don't enact a law of Home Rule.
4 It may create a chaotic condition in that particular County
5 because they haven't been able to get themselves together.
6 It just seems to me that they should have a time period
7 in which they could get themselves together, formulate the
8 kind of committees they want, and then elect or get a
9 Home Charter Rule government laid out so the people will
10 be more or less satisfied with what they do. This way,
11 you are putting a gun at their heads.

12 MR. CLAGETT: Our study and a special study
13 made of the existing forms of government throughout the
14 State showed that one of its principal attributes was the
15 variety to take care of the problems which are peculiar
16 to a particular section of the State. We felt that
17 this was, and the general comment upon it was such that
18 we did not want to violate that freedom of choice and
19 consequently, we have given great flexibility or great
20 range of choice insofar as the County is concerned inso-
21 far as whether it adopts a charter or whether it

1 reorganizes its existing structural form in some other
2 way that best suits it. We do not believe that there
3 will be such a state of confusion by the direct grant from
4 the Constitution of the Home Rule power that the County
5 would not be able to effectively take care of.

6 MR. DELLA: Mr. Chairman, I just want to
7 make this added statement that I remember when we had the
8 merger of the AFL-CIO. We had a two-year period in which
9 to merge. Some of the areas were merged almost immediate-
10 ly. Others, it took almost a full two years together to
11 work out the procedures that would be proper and advan-
12 tageous to that particular group.

13 THE CHAIRMAN: Mr. Bond?

14 MR. BOND: I would just like to ask the
15 Chairman this question. It is true that we haven't
16 imposed the same fiscal safeguards on the County govern-
17 ment that we have on the State Legislature because they
18 can tax, I mean, they can incur debt without being able
19 to repay it. Is it contemplated by the Committee that
20 there will be something put in the draft to provide for
21 this hiatus that Mr. Sykes referred to and also Mr. Case

1 referred to whereas the existing County Commissioners can
2 just take off on Home Rule with fiscal irresponsibility
3 if they want to?

4 MR. CLAGETT: Yes, the Committee does contem-
5 plate that when the General Assembly starts exercising
6 its power to withdraw that this area will come in for
7 serious consideration by it.

8 THE CHAIRMAN: Judge Adkins?

9 JUDGE ADKINS: I would like to ask for clari-
10 fication on the meaning of Section, of Subparagraph 1.
11 I don't get much out of this. Provided optional plans
12 of organization and structure. My first question is,
13 does that mean that the Legislature has to provide
14 more than one method and secondly, what does the term,
15 abandonment of optional form of government, mean,
16 specifically related to the term, abandon, and to the
17 term, optional? What is an optional form of local
18 government? Is it the optional term that is provided for
19 in the first sentence of this paragraph? I just don't
20 understand this.

21 MR. CLAGETT: Well, it is contemplated that

1 the General Assembly will come up with more than one plan
2 of organization and structure. It will come up with
3 either 23 (a) which is a model charter already drafted
4 by the General Assembly and enacted into statute, and
5 possibly will come up with the implementation of Article
6 11 (f) in some form. So we contemplate that it will
7 come up with at least two separate plans and coming up
8 with that, a County which presently has a charter, may
9 wish to abandon its present charter and adopt one of
10 model plans drafted by the General Assembly; and if it
11 wished to do so, it could do so.

12 JUDGE ADKINS: Why did the Committee consider
13 it necessary or sufficiently important to be constitu-
14 tional? Why wouldn't one plan be sufficient?

15 MR. CLAGETT: One plan would mandate a charter,
16 and we do not contemplate the charter is the only effec-
17 tive form of structural government.

18 JUDGE ADKINS: I dissent from that. If the
19 adoption is self-optional, why do you have to have
20 optional alternatives which is what you are suggesting?

21 MR. CLAGETT: I think the answer is, there may

1 be a lack of sophistication in the lack of a County to
2 draft a form of structural reorganization, and we
3 dump that responsibility upon the General Assembly.

4 THE CHAIRMAN: In other words, the Legislature
5 may draft a sample charter. It may also provide a form
6 of government, the County Commissioner form or some
7 other form.

8 JUDGE ADKINS: I mean this to mean they would
9 have to draw up two sample charters.

10 THE CHAIRMAN: Not necessarily. They may
11 have the County Commissioner form of government and one
12 charter.

13 MR. CLAGETT: One charter and one other form
14 of government which may be Home Rule.

15 MRS. BOTHE: I wonder where this term, optional,
16 came from, if it was any kind of term of art?

17 MR. CLAGETT: It comes right out of the exist-
18 ing Article 11 (a); excuse me, 11 (e), I think it is.
19 Yes, 11 (e).

20 THE CHAIRMAN: Mr. Case?

21 MR. CASE: Mr. Chairman and Members of the

1 Commission, if I understand this proposal correctly, and
2 I suppose perhaps it is not the time to demonstrate a
3 viewpoint, but this worries me very, very much, because
4 as I understand it, it departs from our existing method
5 of charter form of government as we know it in Maryland
6 as applied to municipalities which is seemingly what this
7 is more closely patterned after than anything else.

8 Now, in municipalities, there is a model
9 charter and also there is a provision that if an incor-
10 porated town doesn't like the model charter, then it
11 can adopt its own charter, but it has to do one of the
12 two. Either it has to adopt its own charter and there-
13 fore, and this is voted on by the people, and they know
14 what it is; or they adopt the one in the Code, and everybody
15 can read it. But this proposal I suggest adopts a third
16 method, and that is as Mr. Sykes has pointed out, you do
17 nothing, in which event the County Commissioners exercise
18 these tremendously broad powers without any contract
19 between them and the people, and to me, this is not, this
20 is not proper, and I think that, for example, in the area
21 which I have some slight knowledgeability, I suppose you

1 could say in the borrowing field, I think it would
2 be looked upon with almost, well, a great degree of ask-
3 ance by the rating agencies because the one thing that
4 the rating agencies ask you when you go to talk to them
5 about the County's fiscal position is how many bonds are
6 authorized, and you either say there are so many bonds
7 authorized, or there are none. Well, if there are none,
8 how do they become authorized? Well, the General
9 Assembly has to pass a law or the County Council, which
10 is a legislative body, and a charter County has to pass
11 a law, but at least a law has to be passed. But if you
12 went to them and said the County Commissioners, by reso-
13 lution, can just issue bonds, I am very much afraid,
14 Ladies and Gentlemen, that the credit of those Counties
15 which didn't adopt a charter would be very seriously im-
16 paired.

17 I think the Commission ought to take a real
18 strong look at this particular provision.

19 THE CHAIRMAN: Any further questions about
20 this Section? If not, can we move to Section 11.04?

21 MR. CLAGETT: City Governments. The Counties

1 may provide by public local law for the creation of
2 any new municipal corporations within its boundaries
3 and for methods and procedures of incorporating, changing,
4 merging and dissolving them and altering their boundaries.
5 No existing municipal corporation shall be dissolved
6 without its consent or the consent of the General Assem-
7 bly by law.

8 MR. SCANLAN: Does this mean that^{if}/the County
9 didn't provide for public local law, it would be forever-
10 more impossible for a new city charter?--

11 MR. CLAGETT: Exactly. Let me point out that
12 the Committee has gone through a real metamorphosis of
13 thinking on this one. We started out at the opposite
14 end of the pole preserving exactly the existing setup,
15 and then we moved around, and then we finally ended up
16 right where you see here. That is a considered evolution
17 of anything in conformity with what we have observed
18 taking place insofar as the transferral by the General
19 Assembly of many of its powers over the municipalities
20 to the County particularly as now by an amendment passed
21 back in 1935. No new municipality can be created without

1 the approval and consent of the County. On dissolution
2 the County must absorb all the assets and obligations of
3 a municipality. In the field of abnegation, the General
4 Assembly has moved it into the local arena. So we have
5 observed here that the General Assembly has been divest-
6 ing itself of much of its power and transferring that
7 power to the County. That being the process, then it is
8 illogical conclusion to give to the County the deter-
9 mination of whether or not there shall be any new
10 municipalities or what effect the function of the County
11 and the municipality shall be.

12 THE CHAIRMAN: Judge Adkins?

13 JUDGE ADKINS: Is the last sentence inconsis-
14 tent with the prohibition against local legislation,
15 and if so, which controls?

16 MR. CLAGETT: Remember, this must be initiated
17 by the County, and the County, if it fails to get the
18 consent of the municipal corporation, may then appeal to
19 the General Assembly; and on the appeal of the County,
20 the General Assembly can then act.

21 THE CHAIRMAN: Mr. Clagett, let me interrupt

1 this because this highlights a difference in recollection
2 between Mr. Brooks and me as to the decision of the Com-
3 mittee on Thursday evening, and I think that there is
4 some inconsistency in the language of the reporting of
5 this Section. Your first sentence says that the County
6 may provide that public local law for creation, and so
7 forth, and that methods and procedures of incorporating,
8 changing, merging, and dissolving them -- which I take
9 it, as written would refer grammatically to new municipal
10 corporations.

11 It was my understanding that the Committee's
12 final decision was that the County would have full power
13 to alter the powers of existing and new municipal cor-
14 porations and that the only thing that required the con-
15 sent of the municipal corporation was its dissolution.

16 Mr. Brooks' recollection is that you didn't
17 go that far and that the withdrawal of powers, as well
18 as dissolution of the existing municipal corporations
19 required its consent. Now, one thought is implicit in
20 one sentence, and the other thought in the other, and
21 therefore, we are not clear as to what the Committee inten-
ded.

1 MR. CLAGETT: The Committee intended that
2 insofar as any change in the existing charters of municipal
3 corporations, it should be by and with the consent of
4 the County and not merely its dissolution.

5 THE CHAIRMAN: Then Judge Adkins' point is
6 well taken, it seems to me. This could be a conflict
7 with the power of local legislation of Counties.

8 MRS. FREEDLANDER: We raised this very
9 question Thursday night.

10 THE CHAIRMAN: I know it was discussed, and
11 the difficulty is we didn't remember exactly.

12 MRS. FREEDLANDER: And we said in this par-
13 ticular instance although there were some of us who dis-
14 agreed, there would be local legislation. We recognized
15 the inconsistency. We saw no way out and recognized in
16 this particular instance there would be cases at the
17 invitation of the Counties, there would be this dissolu-
18 tion.

19 MR. BROOKS: That it would be approval rather
20 than legislation itself, but it would be only in the
21 nature of withdrawal of existing power.

1 MRS. FREEDLANDER: And we said by joint resolu-
2 tion because we did not want to start this local law
3 again, so after hours of talking, we said we agreed that
4 this would be by joint resolution. We ought to change,
5 by law, because I think your minutes would show, John.

6 MR. MILLER: How would an existing corporation
7 change its charter if it wanted to? An existing
8 municipal corporation. How could it change its charter
9 if it wanted to?

10 MRS. FREEDLANDER: Only with the consent of the
11 County.

12 MR. MILLER: It just says, it refers to new
13 corporations.

14 THE CHAIRMAN: I think you've got an irrecon-
15 cilible conflict between the two sentences, but I think
16 we need to get the Committee's recommendation clear,
17 and then we can work on the language.

18 MR. BROOKS: If I may interrupt. Alternative
19 to the Staff document is the elaboration of what I under-
20 stood to be the intent of the Committee, the (a) Section
21 is precisely what you already have, and the (b) Section

1 is the elaboration.

2 MR. CLAGETT: That would be under alternative
3 2.

4 MR. BROOKS: Alternative 2.

5 MR. CLAGETT: As it appears on Page 4 of the
6 Staff study.

7 MR. CLAGETT: Now, I think you get the idea
8 of what has happened here rather than belaboring the
9 detail, because we can come back and study it in further
10 detail, but the purpose at this point is to give you
11 an overall concept of the recommendation of the Committee,
12 and then we can come back and approach some of the indi-
13 vidual segments of it.

14 THE CHAIRMAN: Senator Hoff?

15 MR. HOFF: Does the Committee realize that the
16 practical effect of this would be to prohibit all new
17 municipalities and to prohibit all annexations by
18 municipalities?

19 MR. CLAGETT: Yes, it does, and we think that is
20 desirable. I might point out that we have seen the
21 growth of County responsibility and its entry into the

1 field of rendering municipal services and functions.
2 You see the lines between municipal corporations and
3 these unincorporated towns blurring the differences be-
4 tween the two, and where the Counties have a respon-
5 sibility of these large unincorporated grounds, and you
6 see the Counties solving those problems, there should be
7 no greater restriction insofar as the existing municipal
8 corporations are concerned. The municipalities as such
9 will be nonconforming uses, and that is what is contem-
10 plated insofar as the Committee approach is concerned.

11 MR. HOFF: May I ask one further question?
12 I presume the Committee also realizes that by prohibiting
13 annexation you are, in effect, forcing some of these
14 municipalities to go out of business. I gather that is
15 what you have in mind.

16 MR. CLAGETT: That is intended, but let me
17 point up the fact of the matter, and that is that
18 you've got, you had 152 municipalities back in 1960.
19 You have 149 now, because three have gone out of existence.
20 Now, of that 149 remaining, 115 have a population of less
21 than 2500 persons. So the number that you are speaking

1 about that are substantial are very small, and some of
2 those municipalities in that 115 have no more than five
3 or six persons in them. So the dissolution is contem-
4 plated, and it is thought to be a good one. I point out
5 a further fact, and that is in Baltimore County and
6 Howard County, you have no municipalities whatsoever,
7 and they get along reasonably well in comparison with
8 Prince Georges and other big Counties.

9 MR. CASE: May I ask what in this particular
10 point on four provisions would prevent an existing new
11 municipality from annexing?

12 MR. CLAGETT: Nothing except the concept of
13 the County.

14 MR. CASE: It doesn't say anything about that.
15 Doesn't this sentence deal with new municipalities?

16 MR. SCANLAN: Changing its boundaries.

17 THE CHAIRMAN: You are touching on the con-
18 flict that I mentioned before. There is a conflict in
19 language, but the Committee has made it clear that
20 although there is a conflict in the language, they intend
21 the second sentence to be broader and to cover with

1 respect to existing municipalities many of the things
2 and perhaps all of the things covered in the first sen-
3 tence with respect to new municipalities.

4 MR. CLAGETT: That is correct.

5 MR. CASE: We will not be asked to vote up
6 or down in this form, will we?

7 THE CHAIRMAN: No.

8 MR. CLAGETT: We will introduce the alternative
9 as possible substitute language.

10 THE CHAIRMAN: Let me add a comment to Senator
11 Hoff's question. The Committee has pointed out, Senator
12 Hoff, that by statute in Maryland no new municipality
13 can now be created without the consent of the County in
14 which it is located. Any further question about 11.04?

15 MR. CASE: I would say one thing, and it has
16 been my experience that the right of annexation or the
17 privilege of annexation is a very, very important thing
18 to existing municipalities in this State, and I can
19 cite to you two very, very rapidly growing municipalities
20 which are very progressive and are bringing a lot to
21 their respective Counties, and they are Rockville and

1 Bowie --

2 MR. CLAGETT: Which annexed which?

3 MR. CASE: Bowie and Bel Air. I wrote the
4 charter, but I would be sorely perplexed if this went
5 through.

6 MR. CLAGETT: We recognize this is not with-
7 out its difficulties. Section 11.05, Intrastate Agree-
8 ment. I would like to have inserted intrastate, inter-
9 governmental agreement. Any County, other civil
10 divisions, or municipal corporation may, except to the
11 extent prohibited by public general law, agree with the
12 State or with any other County civil division or municipal
13 corporation for the joint administration of any of their
14 functions and powers and the sharing of costs thereof.

15 THE CHAIRMAN: Any questions?

16 Mr. Case?

17 MR. CASE: To me this is again another serious
18 one. Does this mean a County could agree to bargain
19 with its tax power. It is certainly the function of the
20 County.

21 DR. BARD: Except to the extent prohibited

1 by public general law.

2 MR. CLAGETT: Which will be the brake --

3 MR. CASE: Suppose it is not within the
4 general law?

5 MR. CLAGETT: Can you make your question a
6 little more specific?

7 MR. CASE: Can they?

8 MR. CLAGETT: Bargain away in what way?

9 MR. CASE: Well, could a County say to a
10 municipality that within the confines of the municipality
11 you can levy and collect County taxes?

12 MR. CLAGETT: Where would that differ from
13 what it is doing now? It is concurrent power between
14 the two now.

15 MR. CASE: The County collects the City taxes
16 now. It is the other way.

17 MR. CLAGETT: Isn't it concurring? They both
18 collect them at present.

19 MR. CASE: But the City does not collect
20 County taxes.

21 MR. CLAGETT: The Court of Appeals has

1 interpreted that as being a concurring power.

2 THE CHAIRMAN: Mrs. Freedlander?

3 MRS. FREEDLANDER: In answer to Mr. Case, the
4 answer is Yes, if we are planning on any kind of metro-
5 politan government or district, call it what you will,
6 there is going to be some sharing of their taxation
7 powers in order to perform a joint function. That is
8 the meaning of this as I understand it.

9 MR. CASE: I just asked.

10 THE CHAIRMAN: I think it is contemplated by
11 the Committee from the discussions I have heard that
12 what they are talking about is joint administration of
13 functions and powers. If, for instance, under the
14 public general law two Counties were authorized to im-
15 pose an income tax, they could provide one method or
16 means by which the tax would be administered jointly.

17 MR. CASE: Isn't it perfectly obvious that
18 if, as the Commission indicates, and this is, and I think
19 it is right, that the Counties are the creatures of the
20 General Assembly that you don't need anything in the
21 Constitution to give the Legislature the power to permit

1 its own creatures to bargain with one another. Couldn't
2 the Legislature, by general law, do exactly this?

3 THE CHAIRMAN: This goes one step further.

4 MR. CASE: Why do you have to put anything like
5 this in the Constitution?

6 THE CHAIRMAN: This authorizes the Counties
7 to do it.

8 MR. CLAGETT: And it is a useful tool. It
9 would be very useful in many situations.

10 MR. CASE: I just wondered.

11 THE CHAIRMAN: Mr. Hargrove mentioned police
12 powers. Baltimore City, Anne Arundel and Baltimore County
13 may have one police force right now.

14 MR. HARGROVE: State Police right now.

15 MR. SYKES: Could I ask a question about the
16 whole draft? I think I know a little more about the
17 problems involved in that draft. We also have before us
18 a Staff memo dated October 14, 1966, Staff memo dated
19 October 24, 1966, and a proposed draft by, I understand
20 it was drawn by the Chairman. It seems to me since we
21 are engaged in giving ourselves the necessary overall

1 perspective that we can't really decide on the questions
2 raised by the Committee draft unless we know something
3 about these other drafts except that if it is meant
4 that these other drafts will be ignored by us.

5 THE CHAIRMAN: I am going to make this sug-
6 gestion to you if it meets with the approval of all of
7 you, in the 20 minutes that we have left for this Section,
8 I would like to give Mrs. Kostritsky an opportunity to
9 address the Commission with respect to part of the prob-
10 lems in this area. As all of you know, she is not only
11 a reporter for this Commission and has been working very
12 closely with this particular Committee, but in addition
13 to that, she has been employed full time for more than
14 a year by the City of Baltimore as part of a task force
15 specifically working on the Constitution. I would also
16 like to give Mr. Brooks a few minutes to outline in gen-
17 eral form the Staff memo and to give Mr. Sayre a few
18 minutes to outline his views. I think if you have those
19 three and they will all have to be limited, because if
20 we cut them up into 20 minutes, it will mean six or seven
21 minutes apiece, you will get a pretty comprehensive pic-

1 ture.

2 Mrs. Kostritsky?

3 I am going to assume the prerogative of call-
4 ing time on each of the three, because we said we were
5 going to adjourn at 9:30, and if we stretch it beyond,
6 we waste time.

7 MRS. KOSTRITSKY: I hope we can carry this as
8 a dialogue. I can tell you the areas of concern to the
9 City, since this is something that I am sure is of interest
10 to you at the moment. You earlier addressed yourself to
11 that matter of boundary changes, and there was an indica-
12 tion that there was a concern with the necessity for a
13 referendum, and this is the kind of compromise -- I think
14 the City itself initially took that protection on its
15 view which is exhibited by the need for a referendum by
16 saying, Well, if you are going to take part of any area
17 away and start to carve up Counties, you are going to
18 need a three-way referendum. Not only in that area that
19 is shifting are you going to need it, you can't give
20 this area the absolute veto power, you are going to need
21 that referendum if that area is going to acquire the

1 County. How is it going to upset the structure of that
2 County? But realistically, at the same time you are
3 going to have to consider the interest of that area
4 losing territory. We are all aware that changing of
5 boundaries is no longer that of moving undeveloped land.
6 It is a very realistic problem of the total financial
7 and fiscal resources of any area that is moving at that
8 time. This would indicate that the power really should
9 remain in the General Assembly, because otherwise you
10 are going to freeze your boundaries. You will say, If
11 we are going to referendum, we are going to freeze our
12 existing boundaries and leave them where they are and
13 accept entities of Counties as they are.

14 And if the General Assembly cannot, at that
15 point, effect any change necessary, this truly leads you
16 into the next stage of this thing, which is given that
17 set of circumstances, what tool can be given to the
18 Legislature to form those meaningful areas for government,
19 accepting the fact that at this moment boundary lines
20 are not meaningful in those rapidly developing areas
21 where development does not respect the boundary line.

1 It has jumped over this. The tool in that case is the
2 creation of some other governmental unit, federation of
3 local units, requirement by the General Assembly that
4 powers that have been given to these Counties are required
5 to be exercised jointly.

6 Now, when we faced up to the fact that many,
7 many things now are transcending local boundary lines,
8 we considered the, whether this broad grant of power would
9 for the future be that meaningful power if you left open
10 that door whereby any and all powers could be withdrawn
11 from local units and vested within any undefined authority
12 agency, civil division, no matter what its name, and
13 whether we were going to have a three-tier level of
14 government or whether we were going to have a ten-tier
15 level of government. There was a great area of uncer-
16 tainty about this. At this point, if you consider the
17 necessity to realistically accept the fact that there are
18 several interests in the State, there is that which is
19 the indigenous one of both Counties which is a completely
20 recognizable thing; and there is also a problem demon-
21 strated by the corridor development of this State. We

1 cannot ignore the fact that we are developing a corridor
2 of heavy and intense and dense development from Washing-
3 ton to the Pennsylvania line, and this is more and more
4 constituting an area of community interest, and that some-
5 how the problems within this corridor must be realistical-
6 ly resolved at this point. I don't know whether you are
7 going to do this by simply giving the General Assembly
8 the power to change any and all boundaries and to give
9 full recognition to this kind of development or whether
10 you are going to structure something that is going to
11 leave close to the local unit of government those powers
12 which directly affect them, but accept the fact that
13 some of those powers cannot realistically be exercised
14 by one unit alone. At that moment, I think our desire
15 has been to establish some means whereby that the simple
16 fact that a matter does transcend local boundaries is not
17 sufficient reason for State intervention and the exercise
18 of that power, but that indeed, there must be a way that
19 there could be an area-wide exercise of those powers
20 which are area-wide in their nature, that there is a
21 community of interest that must be recognized in this,

1 and that although storm drainage may go from one County
2 to another, that in fact, this is not a matter of State
3 wide concern. It is a matter of local concern, but it
4 does affect more than one political subdivision.

5 This is the dilemma which we cite at the
6 moment. We are watching with a great deal of interest
7 what does come out, that these matters really be a matter
8 of concern to this particular Commission at this point.

9 THE CHAIRMAN: Thank you, Mrs. Kostritsky.

10 Mr. Brooks?

11 MR. BROOKS: Some of you may want to refer to
12 the Staff memo included in your materials. This summer
13 we had with us a graduate student from Johns Hopkins
14 named John Elwood, who contributed to researching a number
15 of the questions in the area of local government.
16 Also very fortunately, we had for two weeks Walter Barnett
17 that we borrowed from a law firm in the City that helped
18 with the drafting of the draft you have dated the 14th.
19 Also this particular draft shares some of my own views.
20 As the Committee's own discussions have progressed, some
21 of the discussions among the Staff and our studies have

1 changed our opinions as to what should be recommended as
2 time has progressed.

3 One of the products of this is a draft that
4 is becoming increasingly shorter over the prior drafts
5 in that one of our purposes was to achieve a reasonably
6 succinct while having adequate coverage of the area of
7 local government and a new Constitution.

8 One of the things we very much wanted to elim-
9 inate and have in this particular draft is what Mr.
10 Scanlan, I believe, referred to as the details of how
11 you go about getting a charter in the County or any
12 political subdivision. The idea of some importance was,
13 is there in fact at the present time, a level of govern-
14 ment between the City, excuse me, between the County and
15 the State; and if so, how would one identify it at the
16 moment, and it would seem that this level of government
17 already exists in the form of some 20-plus authorities,
18 most of which are rather inactive and several of which
19 are supposed to be active and very ineffective at the
20 moment. But these authorities do, in fact, attempt to
21 carry out some of the responsibilities in between the

1 County and the State that have some intergovernmental
2 responsibilities. One of the things that became apparent
3 from this study, however, was that most persons who
4 have done a great deal of work in the area of regional
5 authorities point out two difficulties with such authority,
6 one that they are not representative, that they are
7 appointed by a number of other participating governments
8 and they are not necessarily in any way proportional
9 representation; and secondly, that they are mostly single
10 purpose authorities that have built-in prejudices against
11 ever becoming multi-purpose, and they themselves have
12 vested interests which prevent required and desirable
13 cooperation between the various authorities that are
14 set up, such as for instance, the Rapid Transit Authority
15 which may have reason to consider some coordination
16 with the development of the new suburban areas, and the
17 development of the operations of the suburban water and
18 sewerage and sanitary authorities not usually of a mind
19 to cooperate with such authorities; and it has been
20 recommended that the efforts of those authorities be
21 divided in one single direction. It would seem desirable

1 to have a fourth level of government, one between the
2 County and the State which is so structured as to guide
3 all this effort in a single direction through organized
4 regional governments that are created on a representative
5 basis.

6 Second, because of the general grant that was
7 approved at the last meeting to Counties of powers,
8 plus, and because of the recognition of the fact that
9 Maryland has a rare opportunity in having 24 strong
10 County governments, including Baltimore City, gives the
11 State an opportunity to develop a kind of regional
12 government in the form of these Counties which is really
13 not available in the experience of any other State in
14 America today.

15 Already the State has done a great deal in
16 strengthening Counties compared to cities, and the act
17 of giving the Counties the broad grant of power that you
18 have is very significant. Therefore, one effort was to
19 capitalize, so to speak, upon making the Counties the
20 significant subordinate government to the State so that
21 here is recognized the Counties do have such power, and

1 that they then have the paramount power over all of
2 the territory included within their boundaries, and this
3 immediately raised problems as to what you do about the
4 cities in that the cities either have to be separated
5 from the Counties altogether or they must have some kind
6 of concurrent powers over the areas in which they control
7 within the County. This was resolved in favor of the
8 County having the power to grant its own powers to
9 municipalities, and any territory, and regulating the
10 creation of these. There are two alternatives here.

11 I mentioned a moment ago alternative 2 which
12 is what I conceived or understood to be the Committee's
13 determination. Perhaps it is more elaborately worded
14 than what they would want. Alternative 1 is another draft
15 which says virtually the same thing, but is somewhat
16 shorter, but it took liberties in redrafting the whole
17 first provision the Committee submitted, and the last
18 Section is, in fact, a similar section to the interstate
19 agreement that appears in the Committee Report, except
20 this entire document uses cities rather than municipal
21 corporations in order to clearly define it without having

1 to use the verbiage defined in the Constitution what we
2 mean by municipal corporations.

3 THE CHAIRMAN: Mr. Sayre?

4 MR. SAYRE: Abbrievating some thoughts here,
5 there is a booklet put out by Columbia City which reads,
6 Nowhere else in the country are two cities so big and so
7 close together as Washington and Baltimore. From center
8 to center they are 37 miles apart and the modern beltways
9 which ring both cities are only 20 miles apart. The com-
10 bind population of the metropolitan areas is 4½ million,
11 and it is one of the fastest-growing regions in the
12 United States. Between the cities among the major routes
13 connecting them lies the burgeoning Washington-Baltimore
14 corridor. In the last fifteen years the 15 Counties
15 through which the corridor runs have added one million
16 people. In the next fifteen years there will be another
17 one million people.

18 Because of the upward spread of Washington
19 and Baltimore, this central corridor will absorb the
20 major share of growth. We have a spring running roughly
21 from Fairfax, extend it to Richmond, Arlington County,

1 Washington, D.C., Prince Georges, Montgomery County,
2 Howard and Arundel, Baltimore County, Baltimore City,
3 running on up to Philadelphia and New York. This poses
4 a whole big problem, and I will try to abbreviate my
5 remarks where intergovernmental cooperation in our
6 Federal system requires a framework that will encourage
7 the most desirable allocation of governmental functions,
8 responsibilities, and revenues among the several levels
9 of government. Indeed, one of our principal purposes
10 to borrow from one of the purposes of the Advisory Com-
11 mission on Intergovernmental Relations, is to prepare
12 a framework for, methods of coordinating and simplifying
13 tax laws and administrative practices to achieve a more
14 orderly and less competitive fiscal relationship between
15 the levels of government and to reduce the burden of
16 compliance for taxpayers.

17 There are at least four reasons why local
18 governments as now constituted are unable with increasing
19 frequency to perform area-wide functions effectively.
20 They are as follows: One, fragmentation and overlapping
21 of governmental units usually with no immediate govern-

1 mental mechanism for dealing with area-wide problems on
2 a coordinated responsible base. Whenever the word,
3 responsible, is used, this means somehow directly respon-
4 sible to the people that they are acting for.

5 Number two, disparities between tax and service
6 boundaries which means that the larger the number of
7 independent governmental jurisdictions within a metro-
8 politan area, the more inequitable and difficult becomes
9 the process of financing those governmental services
10 which by their nature, are area-wide in character.

11 Three, State constitutional and statutory
12 restrictions, namely, barriers to modernizing the
13 structure and functions of local governments in metro-
14 politan areas especially with regard to the organization
15 and functions of County government, including the role
16 to tax and borrow money.

17 Lastly, number four, metropolitan area prob-
18 lems very often cross State lines. One-fifth of our
19 nation's people are contained in 26 metropolitan areas
20 that include territory in two or more States. Nowhere
21 has there been an adequate solution to coordinating and

1 handling interstate problems, problems of matching
2 political jurisdiction and responsibility with needs and
3 resources. Now, we really have all the material through
4 these various Reports on the Advisory Commission on
5 Intergovernmental Relations, and I don't see any better
6 way of referring back to this full subject than to refer
7 to some of these Reports.

8 Right here the criteria set out on Pages 12
9 and 14 and A-11, June 1962, I will bypass, but it
10 set forth the full line of criteria we have to consider
11 in this entire Article. Powers needed beyond ordinary
12 territorial limits encompass control over possible threat
13 to health and safety, abatement of nuisances, water
14 supply, pollution controls, master plans, regulation of
15 zoning in subdivisions, rail and mass transit, building
16 and so forth. The weakness of City-County intergovern-
17 mental agreement and single and/or multi-purpose author-
18 ities that they work only when the immediate local interest
19 of each participating unit is thought likely to be in
20 conflict with the broader area-wide interest.

21 Thus, intergovernmental agreements are not

1 not suited to effective decision making on issues which
2 transcend the interests of any one part of the area and must
3 depend on an area-wide majority approval rather than
4 area-wide unanimity of all the governmental jurisdictions.
5 I would like to just jump off and leave my argument and
6 take about another three minutes.

7 THE CHAIRMAN: Go ahead.

8 MR. SAYRE: Both single and multi-purpose
9 districts have been able to render area-wide services.
10 While the single purpose authority usually emanates from
11 a State Legislature, there could be agreement between
12 Counties and municipalities that create such authority.
13 However, we are at the dawn when a great many functions
14 must be handled on an area-wide basis. A proliferation
15 of single purpose authorities would make a hollow shell
16 of local County government by the continuous erosion of
17 functions to these limited purpose special districts,
18 and you would have a great maze of functions that would
19 grow up. Now, in regard to multi-purpose districts, a
20 multi-purpose district would appear the logical alterna-
21 tive to the single purpose district by permitting by law

1 the location of a number of services to be performed on
2 an area-wide basis. However, limited experience with multi-
3 purpose districts has been that it is voluntary, and that
4 the district and the addition of functions to it requires
5 the approval of local governing boards or of the voters
6 of the effect of local government.

7 Now, if we jump then to the bypassing of some
8 of the weaknesses, it would mean that we would come to
9 something like a general purpose district that would be
10 able to act with the representative authority that a multi-
11 purpose district could not act with. A government in
12 a democracy means a definite means of representation of
13 the people it governs is embodied in the control and
14 decision-making process. Such a general purpose district
15 or government would allow a two-level structure of
16 government with the assignment of certain general purpose
17 responsibilities to each level. Functions not assigned
18 to the area-wide government would be retained by the
19 County or by the nonconforming municipalities. For the
20 more rural areas, the disttict government would be more
21 or less dormant, having perhaps responsibility for
~~developing a general plan for its zoning and economic~~

1 growth. For the urban metropolitan suburban areas the
2 district government could be assigned responsibility for
3 master plans of land use and water supply, infiltration,
4 pollution control, and so forth. There are certain
5 areas, I think we have to have greater area-wide respon-
6 sibility government so that we would have sort of a two-
7 tier layer, each equally democratic, the methods resolved
8 by the area affected or by the General Assembly. This
9 is something we can discuss later, but in any event, I
10 think the necessity for an area-wide general purpose
11 government is necessary.

12 THE CHAIRMAN: Thank you, Mr. Sayer.

13 We have a practical problem with respect to
14 the hour of convening tomorrow morning. I can put that
15 to a vote since you will not be here tomorrow, Mr. Case.
16 We have debated it and if there is no further debate,
17 let's put the question to a vote.

18 MR. CLAGETT: I would have to make one further
19 comment, and that is what we are voting to abandon and
20 what the Committee has proposed in its draft is exactly
21 what you will find in Article 13 at the present time.

1 In other words, the first sentence which you are amend-
2 ing is contained in Article 13 almost verbatim, and it has
3 worked there. There is no reason why it shouldn't con-
4 tinue to work.

5 THE CHAIRMAN: Let me restate the motion as I
6 now understand it to be. If you will refer back to
7 Section 11.01 (b), second paragraph. I understand that
8 the purpose of the motion, not the exact phrasing of it,
9 the purpose of the motion is to rephrase the first sen-
10 tence of the second paragraph of 11.01 (b) so as to
11 provide that no new County shall be created without
12 the consent of the majority of the voters voting thereon
13 who reside within each County merged voting separately.
14 That is stated very poorly, but the general idea is that
15 the referendum will be a separate referendum requiring
16 a majority vote of the voters of each County which is
17 a party to the merger. Is the question clear?

18 GOVERNOR LANE: Each to decide Yes or No?

19 THE CHAIRMAN: And you must have the affirma-
20 tive Yes for both or all three before the merger can
21 be accomplished. That differs from the present sentence

1 in that the present sentence would require the majority
2 of the total number of voters in the new area combined
3 total.

4 A vote Aye is a vote in favor of the addition-
5 al limitation being written into the first sentence,
6 namely that you have separate approval by the voters, a
7 majority of the voters of each area. A vote No leaves
8 it the way it is now. In either event, the Section
9 will still be before the Commission for further consider-
10 ation and other amendment.

11 Any question now? Ready for the question?
12 All those in favor of the motion that is in favor of
13 the additional restriction in this sentence, signify by
14 a show of hands. Contrary? The motion fails 10 to 12.

15 Mr. Brooks has another announcement.

16 MR. BROOKS: I have another letter today from
17 a student in high school in Washington, D.C., and from
18 the indication here, I think some or everyone here must
19 have gotten a letter from some high school student in
20 of D.C. Some / you have given us your letters to answer and
21 we have done so. This letter indicates they have not

1 received responses and I am sure that is the case, but
2 on the other hand from a public relations standpoint,
3 we should handle such letters either personally or the
4 Staff would, so if you can't handle the letters, we are
5 in a position to try to send some information to students
6 if you get requests.

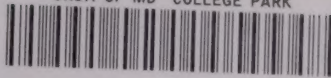
7 MR. SYKES: If the Staff might be interested,
8 I handled the letter by taking the University of Maryland
9 Extension Service bulletin and saying, I am in favor of
10 the Convention for those reasons, and even though I might
11 have voted contrary to certain specific provisions,
12 in the final version, I am wholeheartedly in support of
13 the whole version.

14 MR. BROOKS: That is a good point, and if others
15 of you want some of these brochures, then we will send
16 you copies to answer such correspondence with.

17 THE CHAIRMAN: Thank you very much. 8 o'clock
18 breakfast; 8:30 in here.

19 (Whereupon the meeting adjourned, to reconvene
20 at 8:30 a.m., Tuesday, October 25, 1966.)
21

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